

No. 14770

United States
Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

GEORGE C. FINN, CHARLES C. FINN, INTERNATIONAL
AIRPORTS, INC., a Corporation, PETER A. BANCROFT
and VINELAND ELEMENTARY SCHOOL DISTRICT
OF KERN COUNTY,

Appellees.

and

VINELAND ELEMENTARY SCHOOL DISTRICT OF
KERN COUNTY, CALIFORNIA,

Appellant,

vs.

UNITED STATES OF AMERICA, GEORGE C. FINN,
CHARLES C. FINN, and INTERNATIONAL AIR-
PORTS, INC.,

Appellees.

Transcript of Record

In Two Volumes

Volume II
(Pages 507 to 1010)

FILED

OCT 11 1955

PAUL P. O'BRIEN, Clerk

Appeals from the United States District Court for the
Southern District of California,
Central Division.

No. 14770

United States
Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

GEORGE C. FINN, CHARLES C. FINN, INTERNATIONAL
AIRPORTS, INC., a Corporation, PETER A. BANCROFT
and VINELAND ELEMENTARY SCHOOL DISTRICT
OF KERN COUNTY,

Appellees.

and

VINELAND ELEMENTARY SCHOOL DISTRICT OF
KERN COUNTY, CALIFORNIA,

Appellant,

vs.

UNITED STATES OF AMERICA, GEORGE C. FINN,
CHARLES C. FINN, and INTERNATIONAL AIR-
PORTS, INC.,

Appellees.

Transcript of Record
In Two Volumes

Volume II
(Pages 507 to 1010)

Appeals from the United States District Court for the
Southern District of California,
Central Division.

Friday, October 29, 1954—9:40 A.M.

The Court: Are there ex parte matters?

In the case on trial, let the record show the jury is present.

You may proceed.

Mr. Nelson: If the court please, I would like to call this morning, Mr. Peter A. Bancroft.

The Court: You may.

PETER A. BANCROFT

called as a witness on behalf of defendant Vineland Elementary School District, having been previously sworn, was examined and testified as follows:

The Clerk: You have been sworn, have you not, Mr. Bancroft?

The Witness: Yes.

The Clerk: Be seated, please.

Direct Examination

By Mr. Nelson:

Q. State your occupation, Mr. Bancroft.

A. School superintendent.

Q. And at what school?

A. In the Vineland School District. [368]

Q. How many schools do you have in the Vineland School District? A. Two schools.

Q. Would you name them?

A. Yes. The Vineland School and Sunset School.

Q. During the course of the last few days we have heard that these schools are near Bakersfield,

(Testimony of Peter A. Bancroft.)

Arvin and Lamont. Just where are the schools situated concerning these towns, other towns?

A. That has been erroneous. The two schools are situated in the Vineland School District, and our town as such is Weed Patch; no connection with Lamont or Arvin.

Mr. Nelson: Would the clerk please put before the witness Vineland's Exhibit E?

Q. (By Mr. Nelson): Mr. Bancroft, would you briefly describe this instrument so the court will be aware of what we are discussing?

A. Exhibit E is listed as "War Assets Administration." And the purpose of this document is to list the types of property offered by War Assets Administration, I believe, two school districts.

Q. Have you at all times been present at the Board of Trustees meetings concerning the subject aircraft? A. Yes, I have.

Q. And did your Board of Trustees consider an instrument [369] such as this in connection with the purchase of the subject aircraft?

A. Yes, sir.

Mr. Nelson: May I see the exhibit, Mr. [370] Clerk?

Q. (By Mr. Nelson): I wish to read a portion of this instrument to you, Mr. Bancroft, and ask whether or not your board and yourself has read this and are aware of it?

Mr. Abbott: Objection, your Honor. The instrument is not in evidence.

The Court: Do you wish to offer it?

(Testimony of Peter A. Bancroft.)

Mr. Nelson: Yes, we will offer this instrument in evidence at this time.

The Court: Vineland's Exhibit E——

Mr. Nelson: Vineland's Exhibit E.

The Court: ——for identification. Is there objection?

Mr. Abbott: No objection, your Honor.

The Court: It is stipulated to be a genuine document in all respects it purports to be?

Mr. Abbott: So stipulated.

The Court: Very well. Received in evidence.

(The document referred to, marked Defendant Vineland's Exhibit E for identification, was received in evidence.)

Q. (By Mr. Nelson): I read on the front page thereof, under Paragraph II:

“Distribution under this plan will be confined to aeronautical property which has been determined by the disposal agency to be commercially unsalable by reason of its condition resulting from damage, wear, obsolescence, or otherwise, [371] has no reasonable prospect of sale except as scrap, or with respect to which by reason of its large supply or prior use the estimated cost of care, handling and disposal will exceed the estimated proceeds unless it is promptly sold as scrap, or with respect to which the estimated cost of care, handling and disposal will exceed the estimated proceeds as scrap, or otherwise.”

Was your district board aware of this portion

(Testimony of Peter A. Bancroft.)

of the agreement at the time they considered purchasing this aircraft? A. It was.

Mr. Abbott: I will object to the form of the question. This is not a part of any agreement, your Honor. It is a catalog form, with instructions.

The Court: Sustained. The answer is stricken. Do you wish to rephrase the question?

Mr. Nelson: No, your Honor. We will bring it out in argument, probably, at a better time.

Q. (By Mr. Nelson): What was the district's purpose, Mr. Bancroft, in acquiring the subject aircraft, and to what use was it put?

A. Our district is very poor. In fact, in our county there are 54 elementary districts, and we are in the bottom three in ability to take care of the needs of the children of our district, and that is still the case, by the way. [372]

We had a number of children, in fact a large number, in our schools, and many of them were sent to us from a labor camp operated by the Government. To be specific, 300 children came to our school district from this camp situated in our district, and the Government paid us \$345 in lieu of taxes for these 300 children. Now, that was a year's payment.

This group of children from this camp only increased our problems, and we didn't have the facilities to house these children.

We needed the classrooms, and being poor, we couldn't pay for them. About the same time we gave a survey to the children of our district, because we

(Testimony of Peter A. Bancroft.)

had a big delinquency and truancy problem there. Those of you who are connected with rural areas will realize that we have problems that are different from urban areas. We had all these children, many of them were of bad habits, and it was our problem to provide classroom space with the idea of trying to eliminate some of the delinquency and truancy. So we gave a survey to these children of 50-some subjects, and we asked the children to list by a 1, 2 and 3, their preference for study, and this survey showed that 80 per cent of our student body were interested in aviation..

So, as we were trying to provide a solution to the problem to eliminate delinquency and truancy, we felt aviation should be a part of the program. So at that time we began to [373] investigate the possibilities of obtaining any type of surplus aircraft equipment.

We investigated with various governmental agencies at the time, and we found there were laws restricting the supplying of any surplus aircraft to elementary schools. High schools and colleges might get it, but not elementary schools.

We felt that was a very unfair restriction, it didn't help us, but we were bound by it. That went on for some time, and we were still trying to solve this problem, and were unsuccessful. Finally we were able to obtain some of these aircraft.

This district, being poor, presented various problems to us educationally and financially, and in this

(Testimony of Peter A. Bancroft.)

little town of Weed Patch, you might be interested that it was here that John Steinbeck spent considerable time and wrote his "Grapes of Wrath." This was the area in which this book was written.

Q. Mr. Bancroft, you might restrict the testimony a little bit down to the use of the actual aircraft, although I realize you are bringing it down to the purposes. Bring it down to the use, if you can, at this time.

A. Upon receiving the aircraft, we immediately put it into use as a classroom. The students started to work on it, cleaning it up. It was very dirty after being stored in the open for a number of years, and some of the first things we did was, as I say, to clean it up. It was our firm intention [374] never to fly it again. This was to be a classroom, and it was only of value to us as such. So we filled the gasoline tanks with water, we filled the tires with water, dug holes in the ground in the spot it was to be put in, we built concrete piers to try to save the tires from deteriorating completely by resting the wheel structures on them. We tore out bulkheads and installed forced air coolers of the type we use in the desert air country up there, and disconnected the mags. So that the engines were all completely disconnected, and the plane would be safe, as well as nonusable as a flight instrument.

Q. Does the district have in its possession a film that shows the condition of the subject aircraft, and its identification markings and the present use

(Testimony of Peter A. Bancroft.)

of the aircraft—strike out the phrase “present use”—the use of the aircraft?

A. Yes, sir, it does. [375]

Q. Approximately when was this film taken?

A. I believe it was during the year 1949.

Q. And where was the aircraft at the time the film was taken? A. At our Sunset School.

Q. Were you present at the time the film was made? A. Yes, sir, I was.

Mr. Nelson: We would like to have this film marked at this time, your Honor, as Vineland's Exhibit F for identification.

The Court: It will be so marked.

Mr. Nelson: And if we may have leave of the court, we would like to show this film at this time.

The Court: Do you offer it in evidence?

Mr. Nelson: And I offer it into evidence.

The Court: Any objection to the offer?

Mr. Abbott: No objection.

Mr. Blackman: No objection.

The Court: It is received in evidence.

(The document referred to, marked Defendant Vineland's Exhibit F, was received in evidence.)

The Court: You may exhibit it.

Mr. Nelson: Mr. Bancroft, would you step down and run the film. It is about a three-minute film and shouldn't take very long. [376]

The Court: Very well.

(Testimony of Peter A. Bancroft.)

(Whereupon the film was exhibited.)

Q. (By Mr. Nelson): Mr. Bancroft, you have testified when the Government had you on the stand in the course of their presentation, that there were various offers to the District to purchase this aircraft, and that they were turned down; and also, that the Finns had made various offers and were turned down.

What is the reason the District finally determined to sell this plane to the defendants Finn?

A. The reason that the previous offers were turned down was that, basically, as you can see by the film, we had a classroom, very functional and popular with the students, and we wished to keep it. And until the final offer by the Finns, nobody had shown us how we could still keep a classroom there, and by offering the old airplane, which they, in the contract, agreed to completely set up so in all appearances it would be the same as the plane in suit, no one had ever done that before, and that is why we weren't interested.

Q. Did the Finns also make some offers to obtain the proper clearances and waivers from the Federal Government? A. Yes, they did.

Q. Had the other persons made such an offer?

A. They did not.

Mr. Nelson: We have already reviewed the presentation of [377] the bids, and I believe we have stipulated the bid was accepted. Isn't that true, Mr. Abbott? It won't be necessary at this time——

(Testimony of Peter A. Bancroft.)

Mr. Abbott: Which bid?

Mr. Nelson: The bid of the Finns that was finally accepted. I am trying to avoid going through all that process again.

The Court: Address your remarks to the court, Mr. Nelson.

Mr. Nelson: Yes, your Honor, I will do that.

The Court: Are you asking for a stipulation? Are you offering a stipulation?

Mr. Nelson: I believe there is a stipulation before the court that the bid was presented by the Finns in accordance with the—not in accordance—but along with the notice, and that those are before the court. I will not take the time of the court to go through the procedure of presenting that with Bancroft, unless the Government——

The Court: The exhibits are here in evidence?

Mr. Abbott: There are two bids, your Honor, is the reason for my question; one dated December 5, 1950, which is Vineland's Exhibit C, and another dated January 19, 1951, which is Finns' Exhibit L; both in evidence.

Mr. Nelson: They are all in evidence, your Honor, so I will just ignore going through that.

The Court: Very well. [378]

Q. (By Mr. Nelson): Were specifications drawn, Mr. Bancroft, for all bidders to review in connection with the sale of the subject aircraft?

A. They were, sir.

Q. And were those specifications at the School

(Testimony of Peter A. Bancroft.)

District's office? A. Yes, sir.

Q. And were they there at all times so that anyone could review them in connection with the purchase of this aircraft? A. Yes, sir.

Q. And did the School District advertise to sell this plane and allow anyone to come in and make a bid that desired? A. That is correct, sir.

Q. How long a time did the School District allow for other bidders to come in?

A. Well, the advertisement by law must be posted two weeks, and I think we actually had the specifications there prior to that time and during the full two-week period.

Q. Were other prospective bidders contacted personally or by mail besides the advertisement material?

A. No, sir. We didn't, that I can recall, contact anyone directly.

Q. Were the specifications reviewed by the county counsel prior to the time that the agreement was signed?

A. They were checked by the county counsel. Whether it [379] was prior to that time, I am not sure.

Q. All right. Did the specifications provide for the furnishing of the District with another C-46?

A. Yes, sir.

Q. And what was the purpose of the District asking for this other C-46?

A. We had the classroom in operation, liked it,

(Testimony of Peter A. Bancroft.)

needed it, and wished to continue it that way. And so we wouldn't consider any possible disposal of the airplane in suit unless we were certain we could have an adequate plane replaced.

Mr. Nelson: Will the clerk please hand the witness Vineland's Exhibit A?

Q. (By Mr. Nelson): Do you recognize this document? A. Yes, sir.

Q. Is it, in general, the notice to bidders which your district published? A. It is, sir.

Mr. Nelson: I wish to read to the court, your Honor, the second paragraph there, as follows:

“All bidders are further notified that the successful bidder shall be required to furnish the District with a non-flyable C-46 type aircraft, or equal, designed for educational purposes pursuant to and in accordance with the specifications on file in the Office of the Superintendent, where such [380] specifications may be examined and copied. Such successful bidder shall be required to furnish the District with said non-flyable aircraft, together with instruments of title thereto, and at no cost whatsoever to the District.”

And in the middle of the first paragraph, “Bidders are expressly notified that the aforesaid aircraft was acquired by the District from the Government of the United States and the War Assets Administration, subject to certain restrictions in the

(Testimony of Peter A. Bancroft.)

use thereof, under the deed of conveyance, and the successful bidder will be required to secure the necessary releases to said restrictions from the proper governmental agency of the United States.”

Q. (By Mr. Nelson): Calling your attention, Mr. Bancroft, to the last paragraph just read, concerning the necessity of removing of restrictions, would you state the intent of the Board?

Mr. Abbott: I will object. The Board’s intent is immaterial. It is the formal act that is material to this proceeding.

The Court: Is there any issue here as to the good faith of the School District?

Mr. Abbott: Not of the School District, no.

The Court: There would be no issue of the good faith of the Board. [381]

Mr. Abbott: That is correct, your Honor.

Mr. Nelson: If I may be heard in that respect: the intent of the Board in demanding that restrictions be removed, both in the offer of bids and as it appears in the contract later on, is extremely in point in this action. If there is any ambiguity which arises, and which has been alleged in the agreement between the defendants Finn and the school board, that ambiguity must be determined in accordance with the intention of both parties; and that is the point which we are going to have to get before the court in this action.

Mr. Abbott: The instrument appears to be clear and unambiguous; prepared by a lawyer. The counsel doesn’t point out wherein it is ambiguous.

(Testimony of Peter A. Bancroft.)

I don't notice any ambiguity on its face. Certainly, the parol evidence rule is applicable.

Mr. Nelson: We intend to connect this matter up, your Honor.

The Court: Overruled.

Q. (By Mr. Nelson): Would you please state, Mr. Bancroft, the intention of the Board in connection with this clause which appears in the Notice requiring the waivers and restrictions to be removed?

A. I think it is very evident in the Notice that the Board never had any intention at any time——

Q. If I may interrupt. We aren't particularly interested in what you think. Do you know what the intent of the Board was in connection with that clause? [382]

A. Yes. The Board never did have any intention of releasing this aircraft, title to it, whatever the word "title" means—that seems to be quite a problem—but of releasing the plane permanently to anybody until all Government restrictions had been released, and that is why we went to the trouble of having those specifications in the notice, and in the contract itself.

Q. Was your bid opening at a public meeting?

A. Yes, sir.

Q. Was the public invited to attend that meeting?

A. The public is invited to attend any regular board meeting.

(Testimony of Peter A. Bancroft.)

Q. Was that a regular board meeting?

A. Yes.

Q. Was counsel present at the bid opening?

A. No, sir, it wasn't.

Q. Was anyone present at the bid opening to pass upon the legality thereof?

A. No, sir; only the school board and the administration.

Q. Were the Finns present?

A. I believe they were, sir.

Mr. Nelson: Would the clerk please put before the witness Vineland's Exhibit B, the agreement between defendants Finn and the Vineland School District?

Q. (By Mr. Nelson): You are familiar with this agreement, [383] are you not, Mr. Bancroft?

A. Yes, sir.

Q. Are you familiar with page 2 thereof, paragraph I, wherein it indicated that the District is to transfer its right, title and interest to the subject plane upon execution of the agreement?

Mr. Abbott: Your Honor, I object to that as a mistaken reading of the agreement. It says:

"The District hereby transfers all——"

Mr. Nelson: I will read the exact language, if the court please.

Mr. Bancroft, paragraph I states as follows:

"The District hereby transfers all rights, title and interest in and to that certain C-46 aircraft, No. 2-3645 to the contractors effective immediately upon execution of this agreement."

(Testimony of Peter A. Bancroft.)

Q. (By Mr. Nelson): You are familiar with that provision, are you not?

A. I am trying to find the particular part.

Q. That is page 2, Roman numeral I—paragraph I.

A. I don't have a Roman numeral I on page 2 of this one.

Mr. Nelson: Mr. Clerk, may I see that?

This is a copy of the original. Therefore, it appears on page 1 thereof. [384]

Q. (By Mr. Nelson): You are familiar with that provision? A. Yes, sir.

Q. Now, I call your attention to page 4—better make it paragraph IV, since perhaps yours does not comply with the same page number—paragraph IV, and it reads as follows:

“It is expressly agreed and understood that this agreement is contingent upon the contractor's ability to secure the necessary clearances from the Government of the United States of America on restrictions now existing on the use and possession of the aforesaid described C-46 aircraft, No. 2-3645, by virtue of the Deed of Conveyance of said aircraft from said Government of the United States to the District, and by virtue of the federal laws on the use thereof. Therefore, notwithstanding any other provisions in this agreement, it is agreed and understood, as follows:—”

(Testimony of Peter A. Bancroft.)

Can you state the intention of the District in light of this ambiguity that appears in the contract concerning the necessity of these consents being obtained?

Mr. Abbott: I object to the form of the question, your Honor.

The Court: Sustained. [385]

Q. (By Mr. Nelson): What was the intent of the district at the time that it signed this agreement concerning the acquisition of these consents and waivers?

Mr. Abbott: We object on the ground that the parol evidence rule obtains with respect to varying the terms, which are clear and unequivocal, your Honor.

The Court: Overruled. You may answer.

The Witness: It was the intent of the board of trustees at that time, and since that time never to agree or to think or be interested in parting with this aircraft unless all governmental restrictions were removed, and that is true regardless of how the interpretation of this contract is made by whoever wishes to read it; that the intent of the board was and still is never to part with that aircraft until all governmental restrictions were released.

Q. (By Mr. Nelson): And is that the understanding, your understanding of the wording, where it says, "notwithstanding any other provisions of this agreement"?

A. That seems very definite.

(Testimony of Peter A. Bancroft.)

Q. Did the board of trustees ever give the defendants Finn a bill of sale to the subject aircraft?
A. No, sir, they did not.

Q. Did you give a bill of sale to the defendants Finn to the subject contract?

A. Yes, sir. [386]

Q. Did you talk it over——

The Court: The answer is yes?

The Witness: Yes, sir.

The Court: You personally gave it?

The Witness: I personally gave it, yes, sir.

The Court: It was executed by you?

The Witness: Yes, sir.

The Court: Where is it?

Mr. Nelson: It is in evidence, your Honor.

The Court: What exhibit is it?

Mr. Blackman: It is a part of International's Exhibit A, your Honor.

The Court: Very well.

Q. (By Mr. Nelson): Did you talk this matter over with your board of trustees at the time you gave this bill of sale, Mr. Bancroft?

A. Yes, sir, I did.

Q. Was it at a formal meeting or an informal meeting?

A. Well, I don't even recall if it was at a meeting. We were together, and discussed it, but whether it was—it was not a formal meeting.

Q. And was it their determination that you go ahead and give the bill of sale?

(Testimony of Peter A. Bancroft.)

A. Yes, sir, it was.

Q. Could you say it was at a regular meeting of the [387] board?

Mr. Abbott: I object, your Honor. That calls for a conclusion of law. Regularity involves a number of things under the statute.

The Court: It is a conclusion, but I think it is a conclusion that is entitled to be drawn by this witness. Overruled.

The Witness: Will you repeat the question?

The Court: Was it at a regular meeting or a specially called meeting?

The Witness: As to our meetings, we have two types of meetings.

The Court: Is that an answer?

Mr. Nelson: Not exactly, in that it is possible to have a specially called meeting, which is still a legal meeting.

The Court: You are not referring to legality. You are referring to regularity.

Q. (By Mr. Nelson): I might ask this: Was it a regular meeting or a special meeting called for that purpose? A. No, sir, it was not.

The Court: What do you mean by that? It was not a regular meeting?

The Witness: Your Honor, as has been suggested,——

The Court: I just don't understand your answer. The question was, as I understood it, was it this or that, and [388] you answered, "No."

(Testimony of Peter A. Bancroft.)

The Witness: We have three types of meetings.

The Court: You don't need to go into that with me. I just don't understand your answer to the question. If counsel does, and is satisfied, that is enough.

Q. (By Mr. Nelson): Do you recall approximately where this meeting took place?

A. At the Sunset School.

Q. Were all board members present at the time?

A. Yes, sir.

Q. Was it at the time that you had a regularly, duly authorized meeting? A. No, sir.

The Court: Then you would call it a special meeting, wouldn't you, Mr. Bancroft?

The Witness: No, your Honor. There are two technical terms. There is a regular meeting, which is posted once a month at a regular time and place. A special meeting may be called by the board of trustees, with notice of 24 hours in advance; or there can be a meeting that might be termed special, but not entitled that, because the group could get together at any time for discussion purposes.

The Court: That might be an extra special meeting?

The Witness: It could be, yes, sir.

Q. (By Mr. Nelson): Was the public invited at this [389] meeting?

A. No, sir, they were not.

Q. You have had an opportunity to review your minute books, have you not? A. Yes, sir.

Q. At my request, did you search those books for

(Testimony of Peter A. Bancroft.)

a minute order indicating the authorization to you from the district to give this bill of sale?

A. Yes, sir.

Q. Did you find that authorization in the minute book? A. There was no such authorization.

Mr. Abbott: I will object to the answer, your Honor, unless the witness indicates whether he is indicating written permission, as a result of the search, or an oral authorization. I think it is ambiguous on that point.

Q. (By Mr. Nelson): Would you confine your answer to a written authorization?

A. Yes, sir. We were referring to the minute book, and I would assume that would mean written permission.

Q. We have already covered the point that you did get an okay from the board at an informal meeting? A. Yes, sir.

The Court: Did that include all members of the board of trustees?

The Witness: Yes, sir.

The Court: All signified their agreement that you execute [390] this bill of sale?

The Witness: Yes, your Honor.

Q. (By Mr. Nelson): Where was the plane located when the agreement between the defendants Finn and the district was signed?

A. At Sunset School.

Q. How long did it remain there after the agreement was signed and until it was removed?

A. It remained there continuously.

(Testimony of Peter A. Bancroft.)

Q. How long?

A. Now, we are back to dates again. I believe the agreement was signed in February of 1951, and the plane was flown away in the fall of '51.

Q. Did the Finns remove it at that time?

A. When the plane——

Q. When it was flown away, was it the Finns that removed the aircraft? A. Yes, sir.

Q. Do you know why the Finns hadn't removed it prior to this period of time elapsing?

A. Yes, sir. There were a number of reasons. One of them was that, I believe, the restrictions had not been removed; at least, that is what we were told. We were still using it as a classroom. We wished to continue to use it right up until May so that we would not interfere with the [391] current school year, and, of course, subsequently, after that there was a considerable period of time needed to prepare the plane for flight, because it was in pretty bad condition.

Q. Do you know the purpose for which the Finns removed the plane?

A. Yes. They told me at the time that there were a number of steps to be taken. One, that they would have to remove the restrictions. Two, they would have to prepare the plane for flight upon the time that these restrictions would be removed. They did all the work that they could at our school site, but, obviously, as has been testified, it would take a lot of additional work to license that aircraft, and they felt

(Testimony of Peter A. Bancroft.)

that it would be a considerable additional cost to them if they must transport men and materials from Los Angeles to our school to complete this work, and the reason that they at this time wished to fly the plane to Los Angeles was to complete this work at a considerable saving to them, and we had no objection to that.

Q. Did the board demand that the consents be shown before they allowed the aircraft to be taken by the Finns at that time? A. Yes, sir.

Q. And did the Finns make such a showing, or such a statement?

A. Yes, sir. They said they had received the necessary [392] releases from Washington, and, of course, we were all curious as to what they were, and we were shown, I believe, the CAA—I am not positive whether it was a registration form or the flight permit which we were shown, one or the other, if not both, and given the assurance that those could not be obtained unless the necessary releases had been given.

Q. And was it your belief, your personal belief that these releases had been obtained at that time?

A. Yes, sir, it was.

Q. Was the plane to be brought back, if necessary?

A. That was a very definite agreement with the Finns, and it was our understanding—the board's understanding and mine, in addition, that at any time if the clearances were not made, or the full

(Testimony of Peter A. Bancroft.)

terms of the contract were not met with the district, that the plane would be returned. In fact, I think the Finns went far enough to state that not only would they use every possible means at their disposal to satisfactorily complete the contract with us, but they also stated that at no time would they ever cause embarrassment to the Vineland School District, and if such embarrassment arose, or if the contract was not met, the terms of it, or if the releases were not obtained, that the plane would be returned to the district, and there would be absolutely no strings attached to it whatsoever.

Q. Would you personally have allowed this aircraft to [393] be removed at the time it was if you had any idea that it would not be returned, and the restrictions had not been removed?

A. I certainly would not.

Q. Who told the Finns that it could be flown away? Who was the one that made the personal contact?

A. I did.

Q. Did you talk it over with your board of trustees before you allowed the physical possession to be taken in this manner?

A. Yes, sir, I did.

Q. Was that at a formal meeting of the board?

A. No, sir.

Q. Was it open to the public?

A. No, sir, it was not.

Q. Did the board give you the okay to allow the possession to be taken?

(Testimony of Peter A. Bancroft.)

A. Yes, they did. I might state in addition to that that there may be some thought as to why these informal meetings were held.

We held a number of meetings to discuss this plane, and I think it is fairly evident that a regular meeting entails considerable additional preparation, and these trustees are non-paid, and they have businesses of their own to take care of, and so I make every attempt as district superintendent [394] not to impose upon their time, and yet to handle the business of the district so at all times when we meet, we meet just as fast as we can, go ahead into discussion, and an agreement, and then that is done, whereas if we had to have a formal board meeting, advertise it in advance, and the rest of it, it could not only not be done at the moment, but it takes more preparation and more of their time.

Q. Mr. Bancroft, did the board intend, with your knowledge of their functioning and from being present at their meetings, and was it your personal belief and intent that this aircraft was to be transferred in any form whatsoever, without all the conditions being performed, and all the consents being obtained?

A. That was never the intent of the board, nor of me.

Mr. Nelson: No further questions.

The Court: Mr. Clerk, will you place Vineland's Exhibit—no, it is International Airports' Exhibit A before the witness?

(Testimony of Peter A. Bancroft.)

(The document was placed before the witness.)

The Court: Mr. Bancroft, is the document there entitled, "Bill of Sale," is that that bill of sale which you signed in favor of the defendants Finn on behalf of the Vineland School District on February 28, 1951? A. Yes, sir, it is.

Q. Is that the bill of sale which you state the various [395] members of the board of trustees of the Vineland School District authorized you to sign as superintendent?

The Witness: Yes, sir, it is.

The Court: Was that authorization which you say was given you, given you at a meeting or gathering of all the members of the board of trustees of the Vineland School District?

The Witness: Yes, sir, it was.

The Court: They were all present at the same time, were they?

The Witness: Yes, sir.

The Court: And did they discuss this matter?

The Witness: Yes, sir.

The Court: Did all of them in your presence indicate their agreement that you sign this bill of sale on behalf of the School District?

The Witness: Yes, sir.

The Court: Any further questions of Mr. Bancroft?

Mr. Blackman: I have some, your Honor.

(Testimony of Peter A. Bancroft.)

Cross-Examination

Mr. Blackman: Mr. Clerk, do you have Vineland's Exhibit E, please?

The Court: That is an agreement which apparently is attached as Exhibit A, to the answer. [396]

Mr. Blackman: That is Exhibit E. That was the exhibit that the witness was asked about, and then Mr. Nelson went no further with it. I believe that is a Government document.

The Court: According to the list—it should be brought up to date, Mr. Abbott—Exhibit E——

Mr. Blackman: Yes, sir.

The Court: You are referring to International's Exhibit E?

Mr. Blackman: No, Vineland's Exhibit E, your Honor, as to Administration Instructions of Office of Aircraft Disposal, Educational Aircraft Disposal Division, Washington, D. C.

Mr. Nelson: That is the one I just gave you, Mr. Clerk. It is over on the corner of your desk.

(The document was handed to counsel.)

Q. (By Mr. Blackman): Mr. Bancroft, Mr. Nelson called your attention to Vineland's Exhibit E in evidence, paragraph 2 of which reads as follows:

“Distribution under this plan will be confined to aeronautical property which has been determined by the disposal agency to be commercially unsalable by reason of its condition resulting from wear, tear, obsolescence, or otherwise, has

(Testimony of Peter A. Bancroft.)

no reasonable prospect of sale except as scrap, or with respect to which by reason of its large supply or prior use the estimated cost of care, handling [397] and disposal will exceed the estimated proceeds unless it is promptly sold as scrap, or with respect to which the estimated cost of care, handling and disposal will exceed the estimated proceeds as scrap, or otherwise."

Mr. Blackman: Mr. Clerk, will you lay this before the witness, Exhibit E?

(The document was placed before the witness.)

Q. (By Mr. Blackman, continuing): Was the District aware of those instructions at the time that it applied for the C-46 in suit?

A. I wouldn't say that they were aware of these particular ones, but they knew of them, and we had discussed the condition of these aircraft, and their value to the Government, yes, sir.

Q. Were you aware of it, sir.

A. I would make the same statement on it, that we were aware of the condition of these aircraft, and of their value, and the fact that they were sold to a district that cheap, that there were reasons for it, yes, sir.

Q. Was your application on behalf of the district for the transfer of this C-46 based upon the information which you had gathered out of that Government publication before you, Exhibit E?

A. Partly from the exhibit, but also from, I

(Testimony of Peter A. Bancroft.)

think, [398] general knowledge at the time of the value or war surplus equipment, that the Government was anxious to get rid of this equipment, and that it had very little value.

Mr. Abbott: I will object to the conclusions of the witness as to the Government's intentions, or the value of surplus equipment in general, your Honor.

The Court: Is there any issue as to that?

Mr. Blackman: I don't believe so, your Honor. I didn't really intend the purport of my question to call for that answer.

The Court: Very well.

Mr. Abbott: May the remarks to which the objection is addressed be stricken, your Honor?

The Court: Yes, unless some party wishes the court to take judicial notice, as a matter of common knowledge.

Mr. Blackman: I believe it is written into the Act, your Honor.

The Court: Do you oppose the motion to strike?

Mr. Blackman: On that basis, I will oppose the motion, your Honor.

The Court: Motion denied.

Mr. Abbott: In connection with the judicial notice, we have presented, and will present additional evidence, as to the very type aircraft in suit. Mr. Duly has testified as to the type and prices received for the aircraft, and he said that [399] we were asking a price of \$25,000, and it was reduced to five, and we were able to sell them at five.

The Court: In 1946?

(Testimony of Peter A. Bancroft.)

Mr. Abbott: He said the asking price in 1946 was 25,000, and by lowering the price to five they were able to dispose of some of them.

The Court: Were you referring to commercial value in the market, Mr. Bancroft?

The Witness: I was referring to general value, as we understood it, because I visited the field where these aircraft were, and even the representatives there said, "Well, we are glad to see one more go, because we are sure stuck with them."

The Court: I had thought it was a matter of common knowledge at the time that the Government was anxious to dispose of these aircraft as surplus.

Mr. Abbott: Unquestionably, your Honor. Unquestionably the market was depreciated because of the large stock, but they still had commercial value, and were sold commercially at certain figures.

The Court: The witness said they had little value.

Mr. Abbott: And he was going on to state the Government's intentions in the matter.

The Court: As he understood them.

Mr. Abbott: And as to the fair state of the market, as [400] to which I don't think he is qualified.

The Court: As he understood them.

Mr. Abbott: He has not been qualified as an expert in this field, your Honor, and we have had an expert give evidence on the very point.

The Court: Of course, his state of mind is in issue here. Motion denied. Put your next question.

Q. (By Mr. Blackman): Mr. Bancroft, when

(Testimony of Peter A. Bancroft.)

the district entered into the contract, Vineland's Exhibit B, with the Finns, had Vineland's legitimate need for this particular aircraft been fulfilled?

A. No, sir, it had not.

Q. All right. Assuming that the contract, Exhibit B, was complied with, would Vineland's legitimate need for this aircraft have been fulfilled?

A. No, sir. The one in suit, but not the needs for a similar aircraft.

Q. That was really the question that I asked you. Perhaps I didn't make myself clear. I am speaking now about the aircraft in suit, and I will ask you whether or not at the time that Vineland signed the contract with the Finns, Exhibit B, had Vineland's legitimate needs for the aircraft been fulfilled—that particular aircraft?

Mr. Abbott: Objection, your Honor. That is immaterial. Plaintiff's Exhibit 1, Form 65 agreement, provides that it [401] must be unsuitable for any legitimate use, and the witness has testified this plane was suitable for further educational use.

The Court: Is this directed to the witness' state of mind?

Mr. Blackman: Your Honor, it is.

The Court: The question is on a breach of contract, and that is the reason I have ruled as I have with respect to his state of mind. The Government has charged this defendant with interfering with the advantageous contractual relationships. Is that correct?

(Testimony of Peter A. Bancroft.)

Mr. Abbott: The amended complaint so states, your Honor, although we have asked leave to amend to show in lieu of that charge the charge of conversion of property of the United States, as to which it had the right of possession.

The Court: The objection is overruled.

Mr. Blackman: Will you read the question, Miss Reporter?

(The question was read.)

The Witness: No, sir, they did not.

Q. (By Mr. Blackman): And assuming that Exhibit B had been complied with, then in that event would Vineland's legitimate needs for the aircraft have been fulfilled? A. That is correct.

Mr. Abbott: I will object to the question in that form. It is not addressed to the witness' intention or state of [402] mind. It is wholly immaterial as a fact. If, under the court's ruling, the state of mind is material, the question should be so framed.

The Court: It is relevant perhaps indirectly to that issue. Overruled. The answer may stand.

Q. (By Mr. Blackman): The substitute aircraft, Mr. Bancroft, the one which is not in suit, is that presently located at Vineland School?

A. Yes, sir.

The Court: By "substitute aircraft," do you mean the aircraft which the defendants Finn provided under this agreement?

Mr. Blackman: Yes, your Honor.

The Court: The agreement being Exhibit—

(Testimony of Peter A. Bancroft.)

Mr. Blackman: Exhibit B.

The Court: Vineland's Exhibit B?

Mr. Blackman: That is right.

The Court: Did you so understand it?

The Witness: Yes, sir. Yes, your Honor.

Q. (By Mr. Blackman): And is that substitute aircraft available to Vineland for substantially the same use and purposes as the aircraft in suit?

A. No, sir, it is not. It is at our site, but there is considerable work under the contract that was to be done to this aircraft, which has not been done, and even though [403] the plane is there, it is not in the same condition as we want it, or that it should be.

Q. But it is available for whatever work is required to be done, in order to fit it for the same purpose, is it not? A. Yes, sir, it is.

Q. And such work can be done on the aircraft, can it not? A. Yes, sir.

Q. And such work is the type of work that is provided in the contract which the district signed with the Finns, Exhibit B? A. Yes, sir.

Q. And there is nothing to prevent that work from being done excepting the Finns doing it or Vineland doing it; isn't that true?

A. That is correct.

Q. And as far as you know, Mr. Bancroft, up until October, 1951, did the school district do everything that it was supposed to do under its contract, Exhibit B? A. Yes, sir.

Q. And when you released the airplane to the

(Testimony of Peter A. Bancroft.)

Finns, as you have testified, upon the permission given you by the board of trustees, so far as you were concerned the Finns had obtained the releases that you contemplated and the board [404] contemplated by their contract, Exhibit B; is that true?

A. That is correct.

Q. In other words, at that time you released it for all purposes, didn't you? I am speaking only at that time?

A. Well, we still hadn't consulted our counsel, and we had made an effort to, and so we had a reservation in our own thinking. We felt that the releases had been obtained, because that is what we had been told, but at the same time, as you can understand, when a contract is not complete, you have some worry about it, and in releasing the plane we felt, and so instructed the Finns, and they agreed, that when it was taken to Los Angeles that there would be nothing done there, or it would not be taken anywhere else, so that it would in any way sever the contract which we had with them, and which so stipulated, that the Government releases must be obtained. [405]

Q. But you had no reason to believe, in your own mind, that the Government releases had not been obtained? A. No, sir.

The Court: How far in miles is it from your school to the county counsel's office in Bakersfield?

The Witness: About 17 miles, your Honor.

Q. (By Mr. Blackman): Is there a telephone between your school and the county counsel's office?

(Testimony of Peter A. Bancroft.)

A. Yes, sir. I might add to that, not only did I phone, but I made two trips into the county counsel's office to obtain counsel, and I believe the counsel was out of the county at the time, at least not in his office, at both times.

Q. That was before you did what?

A. It was before we gave, I guess you would say, permission to remove the airplane.

Q. And had the airplane been used by the school for any purpose from and after the beginning of summer vacation, 1951?

A. I believe we used it for storage; but not as a classroom.

Q. And were the Finns in and upon the airplane during the period of time commencing with that vacation?

A. They appeared at times for inspections; but not continuously.

Q. I see. And was there any effort on your part to limit their right of access to the airplane? [406]

A. No, sir. We had agreed to that.

Q. Mr. Bancroft, have you, before coming into court here, ever heard of the Heddlestone plan by name?

A. I heard of Mr. Heddlestone, and wrote to him a number of times, but as far as hearing of a Heddlestone plan, I believe this is the first reference to that.

Q. And before this lawsuit was commenced, had you ever heard of War Assets Form 65 by that name?

(Testimony of Peter A. Bancroft.)

A. I had never heard reference to it by that name, no, sir.

Q. Had you ever heard reference to it by any name other than knowing about a scrap warranty clause, which your signed agreement, which contained such a clause?

A. Well, I thought of this——

Mr. Nelson: I object to the question as being compound and a little difficult to answer. Perhaps it can be broken down.

Q. (By Mr. Blackman): Well, did you ever hear of Form 65 agreement by any name?

A. Not any other than just an agreement form; but not by any title, as such.

Q. I see. In other words, my question is this: Had this agreement been given any publicity, as far as you know in your mind, other than the fact you simply signed an agreement, an agreement at a date—— [407]

Mr. Abbott: Your Honor——

Mr. Blackman: May I finish?

Q. (By Mr. Blackman): ——at a date prior to the time that the school acquired the C-46 aircraft in suit?

Do you understand the question, sir?

A. I believe so.

Mr. Abbott: We will object to the question. The witness' knowledge of publicity of a particular form is not material to any issue here.

(Testimony of Peter A. Bancroft.)

The Court: Whether he heard of it—what is the purpose?

Mr. Abbott: He actually signed the form.

The Court: You are referring now to Plaintiff's Exhibit, or Government's Exhibit 1 here, are you not?

Mr. Blackman: Yes.

The Court: Which is a form, WAA Form 65, is that correct?

Mr. Blackman: Yes, sir.

The Court: What is the purpose whether or not he knew it by some name that they called it in Washington or not?

Mr. Blackman: Whether he heard of any publicity given to this form, other than he——

The Court: What difference does it make? It seems to me it is immaterial.

Mr. Blackman: Very well. Thank you.

Q. (By Mr. Blackman): Now, when the Finns told you that [408] they would like to take the airplane down to Los Angeles to have additional work done on it—I believe your testimony was to license it—did they tell you whether they intended to do the work themselves or have somebody else do it.

A. I don't recall whether they said definitely or not, because they had done most of the work at that time themselves, and as I recall the discussion was that the cost was becoming very great because of hauling materials and the probability of getting some specialist at the school there, and that is the reason they wanted to take it down. So whether they

(Testimony of Peter A. Bancroft.)

actually said they were going to do it themselves or not, I don't recall.

Q. But the item of cost did figure in the conversation you had with the Finns, as to the reason they wanted to take it down to Los Angeles?

A. Yes, it did.

Q. And you and the District were aware that the Finns did intend to license the airplane and that would require the performance of additional work being done on it, is that right? A. Yes, sir.

Q. As far as the District is concerned, Mr. Bancroft, up until the time that the Government instituted its suit in 1952, July 3rd, I believe, 1952, had the District ever served any notice of default or any similar document on the Finns [409] with respect to this contract, Exhibit B?

A. No, sir. The time limit of the agreement terminated and at that time it was renewed to the mutual consent of both parties because the Finns had made a number of statements of actions that they would do. We never saw any evidence to the contrary that they would not perform them. In fact, they made every effort to see that the conditions of the contract were met. But they ran out of time. And so we extended it. But we didn't notify them in writing, or anything like that.

Q. And when the question of title was raised by the Government in its suit of July 3, 1952—that's the pending suit—had the Finns shortly before that time, to your knowledge, flown the aircraft back to Bakersfield and notified you of that fact?

(Testimony of Peter A. Bancroft.)

A. I am not certain as to times, but when it was flown back to Bakersfield, we were so notified.

Mr. Blackman: I have no further questions of the witness.

Mr. Nelson: If the court please, I would like to be heard at this time on a motion, if I may, in light of comments which have come from Mr. Abbott when Mr. Blackman first took on this witness.

The Court: I will hear you later. Let's finish the examination of the witness.

Mr. Nelson: All right, your Honor. Very [410] well.

Q. (By Mr. Abbott): Now, Mr. Bancroft, you have testified that it was your intention to secure some other airplane in lieu of the airplane in suit so that the School District would still have a classroom to use for the children. Now, isn't it true, sir, that in the fall of 1950 there were two C-46A airplanes on the School District premises? A. Yes, sir.

Q. And one of them is the airplane in suit and the other one is 42-96563 Air Force serial number, is that not so? A. Referred to here as the hulk?

Q. Well, does the term "hulk" to you mean Air Force serial No. 42-96563, C-46A?

A. No, sir, it does not. It means to me the one that is not in suit, of the two airplanes.

Q. You don't know the serial number of the airplane not in suit? A. No, sir.

Q. Now, you have told the jury that in the arrangements leading up to the execution of Vine-land's Exhibit B, the agreement dated February 28,

(Testimony of Peter A. Bancroft.)

1951, you contemplated that an airplane would be furnished by the Finns to use for educational purposes. Wasn't that, in fact, the airplane that you already had on your premises, Mr. Bancroft?

A. Mr. Abbott, that airplane had previously been sold [411] to the Finns and was not our airplane.

Q. Had previously been sold, Mr. Bancroft?

A. Yes.

Mr. Abbott: Counsel have already inspected the document I am handing to the clerk to be marked for identification. I ask that there be marked as Government's Exhibit next in order a bill of sale, purportedly from the Vineland Elementary School District, to Charles C. Finn and George C. Finn, dated March 28, 1951.

After marking the exhibit, will you place it before the witness, Mr. Clerk?

The Court: I haven't an up-to-date list of the Government's exhibits, so I don't know what exhibit number it is next. But whatever it is——

Mr. Abbott: That is No. 12, your Honor.

The Clerk: No. 12.

(The document referred to was marked Plaintiff's Exhibit 12 for identification.)

Q. (By Mr. Abbott): Will you examine that document, Government's Exhibit 12 for identification, Mr. Bancroft? A. Yes, sir.

Q. Is what purports to be the signature on that document, in fact, your signature?

(Testimony of Peter A. Bancroft.)

A. Yes, sir.

Q. Did you place your signature on the document on the [412] date which it bears?

A. Apparently I did.

Mr. Abbott: We offer that document in evidence, your Honor. And I would like permission to read a portion of it to the jury.

The Court: By "that document," I take it you refer to——

Mr. Abbott: Government's 12 for identification, your Honor.

The Court: Received in evidence.

(The document referred to, marked Plaintiff's Exhibit 12, was received in evidence.)

Mr. Abbott: Ladies and gentlemen, I will read, in part, from the document described as Government's Exhibit 12, entitled "bill of sale."

"In consideration of \$10 and other good and valuable considerations, the undersigned, owner of the full, real and beneficial title of the aircraft described as follows, C-46A Curtiss-Wright, Serial No. 42-96563, C.A.A. registration No. 111-E, this 28th day of March, 1951, hereby sell, grant, transfer and deliver all of his right, title and interest in and to such airplane unto Charles C. Finn and George C. Finn."

Q. (By Mr. Abbott): Does that document, sir, describe [413] the particular airplane which the

(Testimony of Peter A. Bancroft.)

School District was to receive under the terms of the Vineland's Exhibit B?

A. If that's the C-46 that is not in suit, then I would assume it is.

Mr. Abbott: Mr. Clerk, will you place the document before the witness, again?

The Court: What is "the document"?

Mr. Abbott: Government's Exhibit 12.

The Court: Refer to it by exhibit number, if you will, Mr. Abbott, and save us a great deal of time and effort.

Mr. Abbott: I will be happy to, your Honor.

The Witness: Well, there is a serial number here, and I assume that is the one that is not in suit. That is my reference——

Q. (By Mr. Abbott): Well, in all, for the entire period that you have been superintendent of the Vineland Elementary School District, how many C-46's have been owned by that District?

A. Two C-46's, the one in suit and the other one.

Q. Does the document, Government's Exhibit 12, refer to the aircraft in suit?

A. It doesn't say so.

Q. Now, Mr. Bancroft, you have no doubt as to which of the two aircraft that document applies to, do you, Government's Exhibit No. 12? [414]

A. Mr. Abbott, I am not trying to be difficult here. I merely don't remember the serial number of the plane. And if you know this is not the plane in suit, maybe you could assist me.

(Testimony of Peter A. Bancroft.)

Q. Well, is the serial number, Air Force No. 42-3645?

A. That is not this serial number.

Q. Is the serial number 42-3645 the serial number of the aircraft in suit?

A. I believe it is, sir; but not the one on this bill of sale.

Q. Yes. To which C-46A does the bill of sale, Government's Exhibit 12, apply?

A. I assume that it is the other aircraft.

Q. What was your particular intention as to the particular aircraft which you were transferring when you signed Government's Exhibit 12?

A. It would be for the aircraft not in suit.

Q. Which aircraft has been described in this record as a hulk? A. The one not in suit.

Q. Yes. And is that the aircraft which you intended to receive for the School District and to use as a schoolroom in lieu of the aircraft in suit?

A. Yes, sir, it is.

Q. Now, will you please explain to the jury how it [415] happens that a month after the execution of Vineland's Exhibit B—and may that be placed before the witness so there is no confusion—you executed a bill of sale to the Finns for the aircraft which you were to receive as a new schoolroom?

A. That matter of title and bill of sale keeps coming up, and that isn't my business. It is my understanding that the Finns—that we had given them title to this plane prior to the contract. Apparently——

(Testimony of Peter A. Bancroft.)

The Court: By "this plane," you are referring to the hulk?

The Witness: The hulk, yes, your Honor. Maybe written evidence of that, in the technical form, a bill of sale, had not been issued, and that was done at the later date.

The Court: If I understand what you say, at the time of Vineland's Exhibit B, the agreement of February 28, 1951, it was your understanding that the hulk had previously been sold to the defendants Finn——

The Witness: Yes, your Honor.

The Court: And was their plane, so to speak?

The Witness: Yes, your Honor.

The Court: And that that's the reason it is dealt with in the agreement?

The Witness: Yes, your Honor.

The Court: Exhibit, Vineland's Exhibit B. [416]

Q. (By Mr. Abbott): So there after you gave a bill of sale to the Finns on the aircraft in question, on a C.A.A. bill of sale form, which is Government's Exhibit 12, with the intention of confirming the prior title, Mr. Bancroft?

A. That must have been it.

Q. Were you told by the Finns that they intended to seek Civil Aeronautics Administration registration of the aircraft not in suit in their own names?

The Witness: Would you repeat that again?

Mr. Abbott: Will the reporter read it back, please?

(Testimony of Peter A. Bancroft.)

(The question was read.)

The Court: You are referring to the hulk, now, are you?

Mr. Abbott: I am, your Honor.

The Witness: I don't ever recall that statement. They did tell us that they were going to fly the plane, and that seemed quite ridiculous to us because of the condition. But they did assert that they were going to put the plane in condition to fly it, at the time we sold——

The Court: When was that time?

The Witness: Prior to the contract.

The Court: How long prior? Months or weeks?

The Witness: Probably months, your Honor.

The Court: Probably a month?

The Witness: Months; plural.

The Court: Well, how many? [417]

The Witness: How many? Several.

The Court: Let me see if I get the chronology straight. Several months before you purported to sell the plane in suit to the Finns, defendants Finn, that is, several months before you made the agreement of February 28, 1951, Vineland's Exhibit B, to the defendants Finn, you previously sold them the hulk, had you?

The Witness: Yes, your Honor.

The Court: For how much?

The Witness: Well, it was a combination cash and material exchange. [418]

The Court: So when you made Exhibit B, the

(Testimony of Peter A. Bancroft.)

agreement, with respect to the plane in suit, a part of that agreement was to get the hulk; is that it?

A. Yes, sir.

The Court: To use as a classroom?

The Witness: Or as the contract states, any other suitable aircraft, or any better.

Q. (By Mr. Abbott): Now, if on March 28th you gave a bill of sale to the Finns, for the hulk, did you then take back a bill of sale to perfect the title to the School District, pursuant to Vineland's Exhibit B, the agreement of February 28, 1951?

A. I don't believe at that time we did, because that would be contingent as one of the parts of the contract, and there were many parts that had not been met.

The Court: Did you get the possession of the hulk?

The Witness: Yes, we had possession of the hulk.

Q. (By Mr. Abbott): The hulk had never been off the school grounds, had it, Mr. Bancroft?

A. Yes, it had.

Q. Where had it been?

A. The Finns moved the hulk off of our property, and I believe it was on a neighboring piece of property, and at the time they returned it to us, it was put back on our property, and in a position to use there. [419]

Q. Now, did Mr. Finn tell you that at the time that you executed Government's Exhibit 12, the CAA bill of sale, that it wanted a CAA bill of sale

(Testimony of Peter A. Bancroft.)

on the hulk, in order to secure CAA registration of that airplane?

A. No, sir, I don't remember that at all.

Q. Did he tell you at a later date that he in fact secured CAA registration of that airplane?

A. No, sir.

Q. Did you ever give your consent to CAA registration of that airplane by Mr. Finn?

A. I don't recall any reference to CAA registration.

Q. Would you have given your consent to CAA registration of the hulk in the name of the Finns after February 28, 1951?

Mr. Blackman: I object to that as immaterial to any issue in this case.

Mr. Abbott: Counsel has gone into the witness' state of mind.

The Court: Overruled.

Mr. Nelson: May I object to that as being irrelevant and immaterial, for the record?

The Court: Overruled. He may answer, and then we will take the morning recess.

The Witness: Would you rephrase the question, please?

Mr. Abbott: The reporter will read it, and if it is [420] not clear, I will rephrase it.

(The question was read.)

The Court: By that you mean after the agreement, Exhibit B?

Mr. Abbott: That is correct, your Honor.

(Testimony of Peter A. Bancroft.)

The Witness: Well, to my knowledge, I have never given any permission. I don't see——

The Court: The question is, would you? If it had been requested of you after you made the agreement, Vineland's Exhibit B, would you have given permission thereafter——

The Witness: Your Honor——

The Court: ——to the defendants Finn to register the title of that plane, the hulk, in themselves?

The Witness: Pardon me, your Honor. These are matters that I don't understand, and whether I would or would not, I have no way of knowing. As a school superintendent in charge of educational matters, I am not aware of whether I would have to or would want to give permission for a CAA registration. That I don't understand.

Q. (By Mr. Abbott): You intended to use that hulk after February 28, 1951, as a classroom?

A. That is correct.

Q. For an indefinite period?

A. That is correct.

The Court: You were willing to leave the law to the [421] lawyers, were you not?

The Witness: That is correct, your Honor.

The Court: We will take the morning recess at this time.

You are excused for five minutes, ladies and gentlemen, subject to the usual admonition.

You may step down.

(Thereupon the jury retired from the courtroom.)

The Court: Did you have some matter, Mr. Abbott?

Mr. Abbott: No, your Honor. I was just remaining here until the jury left.

Mr. Nelson: If your Honor please, I had in mind making my motion in the absence of the jury.

The Court: Very well. Is it stipulated, gentlemen, that the jury has left the courtroom?

Mr. Abbott: So stipulated.

Mr. Blackman: So stipulated.

Mr. Nelson: So stipulated.

If it please the court, we respectfully submit a motion at this time, in the light of comments made by Mr. Abbott, wherein he stated that in lieu of the inducement action in this case, that they were to amend their cause of action to state a conversion.

Inasmuch as the Government is apparently willing now to drop completely this inducement action and replace it by using [422] the words, "in lieu," we move that the action for inducing breach of the contract against Mr. Bancroft be dismissed.

The Court: The motion will be denied at this time, without prejudice to a renewal of it at a later date, and if so advised.

Mr. Nelson: Very well, your Honor.

The Court: Since the Government was not willing to discontinue the action voluntarily, we will complete the trial on the issues as framed at the beginning of the trial. Then there may be motions, if counsel are so advised, to amend to conform to the proof.

Mr. Nelson: If your Honor please, I wonder if

(Testimony of Peter A. Bancroft.)

I could impose on the court with a motion, then, to dismiss this action which is being interposed by the Government on conversion.

The Court: At the close of all evidence, you may.

Mr. Nelson: Yes, your Honor.

The Court: We will recess for five minutes.

(A short recess.)

The Court: Let the record show the jury is present in the case on trial.

Do you wish to examine Mr. Bancroft further?

Mr. Abbott: If I may, your Honor.

(The witness resumed the stand.)

Q. (By Mr. Abbott): Mr. Bancroft, do you have before you Vineland's Exhibit B? [423]

Mr. Abbott: If not, will the clerk place it before the witness, please?

(The document was placed before the witness.)

The Witness: Thank you. Yes, sir.

Q. (By Mr. Abbott): In paragraph 3 of that document, which you have previously seen, there is a description of a number of items of property and services to be provided by the Finns as partial consideration for the purchase of the airplane in suit. Did you and the Finns have any discussions as to the total reasonable value of all of those items of material and services? A. No, sir.

Q. Did you in your dealings with the board of trustees place any value thereon?

(Testimony of Peter A. Bancroft.)

A. No, sir. We just listed the things that we wanted, and thought it would be a fair exchange.

Q. At the bottom of page 3, Subparagraph 5, there is a provision for a performance bond in the amount of \$2100. How was the amount of that bond determined?

A. Well, these pages are mixed up, Mr. Abbott.

Q. This is Subparagraph 5 of III of Vineland's Exhibit B, Mr. Bancroft.

A. Yes, I have it. Well, I suppose that is some legal arrangement to guarantee the contract. [424]

Q. Does that represent any particular percentage of the total consideration, Mr. Bancroft?

A. I believe in testimony yesterday by the Finns, I recall that it was 10 per cent.

Q. Well, is that your recollection of the manner of fixing that amount?

A. Wasn't at the time, no, sir.

Q. Do you have an opinion as to the reasonable value of goods and services to be received pursuant to Roman numeral III, Vineland's Exhibit B?

Mr. Nelson: Objection, your Honor, as irrelevant, incompetent and immaterial; doesn't seem to tie into this case or even his mental state; and certainly he is not an expert witness for these proceedings.

Mr. Abbott: I believe it is material two ways, your Honor; one, on the question of value of the aircraft at the time; and the second point is one which relates to cross-examination of the witness, and I will tie it in with later questions.

(Testimony of Peter A. Bancroft.)

The Court: Overruled. You may answer.

The Witness: I don't recall any percentage or formula for basis of this \$2100.

Q. (By Mr. Abbott): The present question, Mr. Bancroft, is, do you have any opinion as to the present reasonable value of the goods and services which the Finns were to supply pursuant to Roman numeral III of Vineland's Exhibit B. [425]

A. Do I have at this time, or the time of the agreement.

Q. On either occasion.

A. I don't have one for either time. I probably have a better estimate of the value now than at that time. We didn't go into——

Q. What is your present estimate?

Mr. Blackman: Just a minute. I don't think his present estimate is material. I object to that.

Mr. Abbott: I make the same statement as before.

The Court: Overruled.

Mr. Nelson: For the record, your Honor, may our objection join with Mr. Blackman's; also calling for an opinion and conclusion of the witness.

The Court: Overruled. You may answer.

The Witness: What I meant to say, at the time I had no estimate of the value. At the present time I have a general idea, but I could not state a specific amount. I never tabulated these items; never investigated thoroughly their cost, and I don't know what they are worth, as far as deterioration.

Q. (By Mr. Abbott): With all those qualifica-

(Testimony of Peter A. Bancroft.)

tions, what is the general impression you have now?

A. I have no impression as far as total value, because I never added them, never totaled them.

Q. Did you, in negotiating with the Finns, have in mind the value to the School District that they would provide in [426] doing the work and furnishing the materials?

A. Frankly, Mr. Abbott, we were more interested in the services these items we are referring to than their value.

Q. Did you get any other bids for the airplane in the months of December, 1950, or January, 1951? And by "the airplane," I mean the airplane in suit.

Mr. Nelson: Your Honor, if I may object. I believe that can be clarified. He has stated two months, December and January, and January would be within the notice period. If he wants to ask as to bids prior to the notice period, and bids in accordance to the period, it might be clear to the court; certainly to the witness.

Mr. Abbott: Well, I will make the question very broad, your Honor.

Q. (By Mr. Abbott): Have you received any other bids for the aircraft in suit, Mr. Bancroft?

A. I interpret your question, Mr. Abbott, by "bid," to mean that it is an agreement or something presented which is acceptable under terms of advertisement, and asked for by the Board. And to my knowledge none was received.

Q. Well, did any person, other than the Finns,

(Testimony of Peter A. Bancroft.)

make to you, in writing or orally, an offer to pay cash for the airplane in suit?

A. We have had a number of such offers.

Q. Did you have an offer in the month of March 1951, [427] for \$28,602?

Mr. Nelson: I am going to object to that as being beyond the time of this agreement, and certainly irrelevant, incompetent and immaterial.

Mr. Abbott: It is material—has the court ruled?

The Court: What is the purpose of it?

Mr. Abbott: Two purposes, your Honor; one to show value of the aircraft, and the other to show the amounts available to the School District from other sources. Mr. Bancroft has testified at great length to the peculiar benefits to the School District on this particular transaction. We wish to show another transaction was even more beneficial to the School District.

The Court: How would it be determined? Assume the transaction was improvident. How would that affect the legality?

Mr. Abbott: That is a matter opened on direct examination, your Honor; not opened by the Government.

The Court: Opened because of the Government's charge that this defendant interfered with advantageous contractual relationship, which is a wilful tort, and the Government wishes to charge diversion, also, which is a wilful tort.

Mr. Abbott: Isn't the value of the airplane on this date so close to the date of execution of Vine-

(Testimony of Peter A. Bancroft.)

land's B material to a determination of the value of the aircraft; which certainly [428] these defendants say was scrap on that occasion?

Mr. Nelson: If your Honor please, on this matter of value, certainly a bid, on which no foundation has been laid here, as to where it came from, who, what time—it might have come out of some local farmer, as far as we know, that has no idea of what the value of the aircraft was—what bearing does that have to something which has been alleged here as to the actual value of the aircraft. That argument falls on its face.

Mr. Abbott: I will lay the foundation, if that is counsel's objection.

Mr. Nelson: That isn't the only objection. No bid which is offered after the agreement has been entered into, the aircraft sold, would be a reasonable basis for determination of that.

Mr. Blackman: International joins in that objection, your Honor. The airplane had been sold as of the time counsel is now speaking. We feel it has no bearing.

Mr. Abbott: The witness said there was no intention of disposing of the aircraft on February 28, 1951, your Honor.

The Court: There was no intention?

Mr. Abbott: No intention to make a present transfer on that date.

The Court: But obligation wasn't there. The School District was not in a position to bargain with

(Testimony of Peter A. Bancroft.)

anyone else [429] after they made a contract with the Finns.

Mr. Abbott: The School District also takes the position it made no disposal. Further, this particular offer I refer to is dated approximately nine days after Vineland's Exhibit B, and therefore could hardly be more timely as an indication of the value of the aircraft on that date. Proper foundation as to the offeror and his address and his occupation can be made.

The Court: Mere offers are not evidence of value. Objection sustained.

Mr. Abbott: Will the clerk please place before the witness Vineland's Exhibit E?

The Court: If you wish to make a record of excluded evidence pursuant to Rule 43(c) you may do so.

Mr. Abbott: I had intended to make an offer of proof during recess. If the court will accept it now, I will make it at this time. May the offer be made at this time in the presence of the jury?

The Court: I would suggest you make it at the recess.

Q. (By Mr. Abbott): Are you now viewing Vineland's Exhibit E?

The Court: I will reverse that. You may make it now in the ordinary presentation. The jury will be instructed to disregard it.

Mr. Abbott: Thank you, your Honor. [430]

The Government offers to prove by the witness on

(Testimony of Peter A. Bancroft.)

the stand that on or about March 8, 1951, Vineland Elementary——

The Court: If you are going to make an offer of proof, and not a record of excluded evidence, make the offer of proof at the recess. I understood you wished to make a record of excluded evidence pursuant to Rule 43(c).

Mr. Abbott: It is an offer of proof.

The Court: You may make it at the recess.

Q. (By Mr. Abbott): Are you now viewing Vineland's Exhibit E, Mr. Brancroft?

A. Yes.

Q. Did you receive that document from Mr. Heddleston at the same time that you received Plaintiff's Exhibit 1, the Form 65 agreement form?

Mr. Nelson: Objection, your Honor, as assuming a fact not in evidence. It has not yet been established that this Form 65 was received from Mr. Heddleston.

The Court: Sustained.

Q. (By Mr. Abbott): Did you receive Vineland's Exhibit E from Mr. Heddleston?

A. I believe so.

Q. And did you receive it with any other documents?

A. We received a large number of documents in this transaction with Mr. Heddleston over a long period of time. We spent considerable time even trying to get information— [431] and it is no criticism of his office; very prompt and all that—but we received a large number of documents pertaining to

(Testimony of Peter A. Bancroft.)

aircraft disposal, and on and on, and I assume that this was one of them.

Q. In fact, your correspondence relative to the acquisition of surplus property was with Mr. Heddleston, was it not?

A. That is correct. And it was very extensive.

Q. And addressed to him at Washington, District of Columbia?

A. Yes, sir.

Q. Will you explain to the jury, and to the court, Mr. Bancroft, how it is, if you intended at the time of execution of Vineland's Exhibit B to pass no present title to the aircraft, that on the same occasion you executed the bill of sale, International's A—which I will ask be placed before you.

Mr. Nelson: Objection, your Honor, on the ground that we are assuming facts not in evidence; particularly, that the bill of sale was executed at the same time that the agreement was.

Mr. Abbott: It bears the same date, your Honor; each dated February 28, 1951.

The Court: The objection is sustained.

Q. (By Mr. Abbott): Mr. Bancroft, did you execute [432] International's Exhibit A, the bill of sale, to the Finns at the same time that you executed Vineland's Exhibit B, the agreement dated February 28, 1951?

A. It is dated April 14th.

Q. Are you referring to International's Exhibit A, bill of sale?

A. Yes, sir.

Q. Did the intention of yourself and the School District change during the period between February 28th, 1951, and April 14, 1951, as that intention re-

(Testimony of Peter A. Bancroft.)

lated to the transfer of full title and possession to the aircraft in suit?

A. Mr. Abbott, if you will refer to the contract, or the agreement, rather, Vineland's Exhibit B. I think it is very definite, in this it states title does pass according to this agreement. Now, this word "title" has constantly cropped up here, and I am not a lawyer, as I stated, and I don't understand its connotation. Regardless of whether we signed this title, or when the date of signing was, it still states in this agreement that regardless, that this District will not pass official title.

Mr. Abbott: Will you read the pending question, Mr. Reporter?

(The question was read.)

Q. (By Mr. Abbott): Will you answer that question?

Mr. Nelson: We object to the question as being compound, [433] asking for both the District's intention and the superintendent's intention, and it would appear to be confusing to me, let alone the witness. Perhaps it can be restated.

Mr. Abbott: I would be very happy to restate it.

Q. (By Mr. Abbott): Did your personal intention with respect to the retention of title and possession change during the period from February 28, 1951, to April 14, 1951? A. No, sir.

Q. Did the intention of the District on that subject change during that period?

(Testimony of Peter A. Bancroft.)

A. I can't speak for the District. You mean the trustees?

The Court: Yes. As far as known to you.

The Witness: As far as I know—I don't know the intention of the District, of the trustees. To my knowledge it never had.

Q. (By Mr. Abbott): Will you explain what it was that caused you to execute International's Exhibit A, the bill of sale, on April 14, 1951, prior to the time that the defendants Finn had completed conformance of the several things they undertook to do in Vineland's Exhibit B?

A. Mr. Abbott, the way these things are being presented, they appear very mysterious. As I tried to outline before, our District is small. We don't have——

The Court: How did you happen to sign the bill of sale? [434] Did one of the defendants Finn come up and say, "Please sign it?" or how did you happen to sign it?

The Witness: That is probably the gist of it.

The Court: Don't you remember?

The Witness: We just didn't take the time to sign the bill at the time of agreement and acceptance by the Board.

The Court: Who asked you to sign the bill?

The Witness: The Finns.

The Court: Do you remember?

The Witness: Yes, your Honor.

The Court: Which one? Both of them or one of them.

(Testimony of Peter A. Bancroft.)

The Witness: I don't remember which one, your Honor.

The Court: Do you remember what they said to you, at the time, about the subject?

The Witness: I think there was a discussion to the effect that—that the agreement called for the signing of a bill of sale; that it had not been done, and therefore it was in order.

The Court: The next question.

Q. (By Mr. Abbott): In connection with the sale of the hulk, Air Force No. 42-96563, did the Vineland Elementary District pass a resolution?

A. No, sir.

Q. Did it file and publish notice for bids?

A. No, sir. [435]

Q. Did it receive bids from any persons other than the Finns? A. No, sir.

Q. Did it require the Finns to secure clearances from the United States?

A. This was just a piece of junk, sir.

The Court: Was there any requirement?

The Witness: No, sir, your Honor.

Q. (By Mr. Abbott): Did the Finns tell you that they intended to fly that airplane? Referring to the hulk, Air Force No. 42-96563.

A. Yes, sir, they did.

Q. Did they tell you about the time that you, acting for the District, sold it to them?

A. They told us that a number of times. We could hardly believe it, that it could be true. It was in very, very poor condition.

(Testimony of Peter A. Bancroft.)

Q. Was the sale of the hulk ever discussed in a meeting of the Board of Trustees?

A. Not a regular meeting.

Q. Was it discussed at any other meeting?

A. Yes, it was.

Q. Was that a special meeting, as that term is used in the statutes?

A. In an informal meeting. [436]

Q. Was there any request by the Finns for a bill of sale on that aircraft prior to February 28, 1951? And by "that aircraft," I mean the hulk.

A. As I recall—of course, I don't understand this business of bill of sale, again. I believe we gave them some evidence in writing of transfer. You see, this wasn't an airplane, as we thought of it as a piece of junk, piece of metal, and didn't think of it at all in the same conditions as the plane in suit.

Q. Well, do you mean that you gave them some writing of transfer other than a Civil Aeronautics Administration bill of sale?

A. We didn't give them any formal bill of sale, that I recall, at all. I think we merely—and I am not positive on this matter—I think we gave them a letter in writing saying, "this piece of junk is yours," or something like that. I don't recall the wording.

Q. And you did that before February 28, 1951?

A. The transfer to the Finns was before that date. And if such written evidence was made, it would be prior to that date.

Q. Then, Mr. Bancroft, why was it necessary to

(Testimony of Peter A. Bancroft.)

execute a second document of title, this time on the Civil Aeronautics Administration form, after February 28, 1951?

A. That I don't understand, Mr. Abbott, because it [437] was a piece of junk. We transferred title—it had very little value, and we wanted to get rid of it. It was an eyesore on the property, and we assumed, I guess, there was some reason for it.

Q. Did Mr. Finn come to you, either Mr. Finn, come to you after February 28, 1951, and tell you that he wanted a Civil Aeronautics Administration bill of sale on the hulk so that he could secure registration in his name of that aircraft at Washington?

A. I don't recall any reference to the bill of sale with reference to the Civil Aeronautics Administration. To me, it was just another visual evidence of passing title, and I don't recall any reference to his methods or purpose for such a bill of sale.

Q. Did Mr. Finn explain to you at that time, at the time you signed the bill of sale on the hulk, which is Government's Exhibit No. 12, why the second bill of sale, or document transferring title, was necessary after an agreement had been signed requiring return of that aircraft to the School District?

A. I don't remember any direct discussion, other than what had been done was not complete enough as a bill of sale, and that is why the other one was signed.

Q. Did Mr. Finn show to you, at the time, or about the time that you delivered possession of the

(Testimony of Peter A. Bancroft.)

aircraft in suit to him, a ferry permit or Civil Aeronautics Administration [438] registration certificate?

A. One or the other, yes, sir.

Q. Well, which was it?

A. Well, that I can't say.

Q. Did you have a discussion with him at that time as to what other documents evidencing Government consent to the transaction with the School District, or Government release of restrictions he might have?

A. Yes, sir. I asked at the time what evidence this permit that the restrictions have been removed, and it was his statement that could not be issued unless the restrictions had been removed.

The Court: By "this" you——

The Witness: From the Government.

The Court: What could be——

The Witness: Clearances, that this permit could not be issued unless the restriction had been removed.

The Court: Is that permit here, this document to which you refer, this writing to which you refer? Is it here in evidence?

The Witness: That I don't know.

The Court: You haven't seen it?

The Witness: No, I haven't.

Mr. Blackman: Your Honor, if I may assist the court, I note in the list of exhibits, Defendants Finn Exhibits, [439] documents which may answer that description. I refer to Defendants Finn Exhibit C-1——

(Testimony of Peter A. Bancroft.)

The Court: Please place that document before the witness, Mr. Clerk.

Mr. Blackman: —C-2 and C-3. I don't know which of them it might have been, but those are all ferry permits.

Mr. Abbott: Well, it could logically be one.

Will you place C-1 before the witness, please, Mr. Clerk?

Q. (By Mr. Abbott): You are now viewing Defendants Finn Exhibit C-1, Mr. Bancroft, entitled "Application and authorization for ferry permit," dated October 10, 1951. Is that the document that was displayed to you by the Finns?

A. I can't say definitely that it was not; but it doesn't look like the one I saw. [440]

The Court: It does not appear to be?

The Witness: It does not appear to be, yes, your Honor, but I can't say positively. This is a ferry permit, and I believe it was some sort—well, I am not certain, but this doesn't look like it.

Q. (By Mr. Abbott): Did you have any discussion with the Finns at that time as to what other papers they might have evidencing governmental consent to the transaction with Vineland?

A. No, sir. We maintained, as we do in many of our school activities, a feeling of trust with those with which we work, and the Finns had always lived up to that evidence, and when they assured me by showing me this permit that they had received the necessary releases from the Government,

(Testimony of Peter A. Bancroft.)

I assumed that that was true. We had never at this time seen any evidence that the Finn boys were not living up to their contract.

Q. Did they have any other discussions with you at that time?

A. I don't recall any other, but we had a lot of discussions, so I wouldn't say no.

Q. Were you ever told by either of the Finns that they had other papers beyond the ferry permit, but that they did not desire to show these because they felt that if the method that they had used to obtain them was known, that other [441] people interested in buying planes could follow the same procedure?

The Court: That assumes a fact not in evidence. You say "the ferry permit," and he has not stated that he saw that.

Mr. Abbott: Your Honor, I am laying a foundation for a statement of the witness.

Mr. Nelson: Your Honor please, I am going to object to the question on the ground there has been no foundation laid for the particular question that he is presenting.

The Court: Sustained.

Mr. Abbott: If the court please, I desire to show an inconsistent statement by the witness.

The Court: You may proceed in a proper way.

(Thereupon a document was handed to counsel for the defendants.)

The Court: All right, gentlemen, let's proceed

(Testimony of Peter A. Bancroft.)

now, and let's move on. I don't want to give you time to hold a conference over it.

Mr. Nelson: This is a 4-page document.

The Court: All you are entitled to do is to examine the documents so that you will know what we are speaking about. You may examine it later, and you may examine the witness with respect to it, but let's not delay the examination at this time.

Mr. Nelson: Yes, you may continue. [442]

Mr. Abbott: I have, and will point out to counsel the particular section of not more than 50 or 60 words which I am interested in.

The Court: I had assumed you had pointed out to them what you have in mind.

Mr. Abbott: I have, your Honor.

The Court: Very well. Let's proceed.

Mr. Abbott: I will ask the clerk to mark a 4-page document, handwritten, the 4 pages not connected, dated Bakersfield, California, June 4, 1952, purportedly signed——

The Court: Don't go into all that detail. You have identified the document. Now, let him mark it for identification, and then we can refer to it hereafter by its identifying number.

Exhibit 13, Mr. Clerk?

The Clerk: Yes, your Honor, Plaintiff's 13, for identification.

(The document referred to was marked Plaintiff's Exhibit No. 13 for identification.)

(Testimony of Peter A. Bancroft.)

The Court: Do you wish it placed before the witness?

Mr. Abbott: May it be placed before the witness?

(The document was placed before the witness.)

The Court: What portion do you wish to direct the witness' attention to?

Mr. Abbott: Starting at the bottom of the second page [443] of that document, Mr. Bancroft, and going on through the third page, do you find the following language——

The Court: Just a moment, now. The document speaks for itself, whether he finds it or not. Do you want him to read it to himself? Do you wish him to read it to himself?

Mr. Abbott: Well, I wish him to identify first the portion which I would ask him to read.

The Court: Very well. Ask him to read to himself a certain portion of it, and when he has done it, to let you know.

Mr. Abbott: Will you read the material beginning at the bottom of page 2.

May I assist the witness to show him the particular point, your Honor?

The Court: Yes.

(Whereupon counsel indicated the portion of the document.)

The Witness: I find no fault with that statement.

(Testimony of Peter A. Bancroft.)

The Court: Have you read it all that he wants to know about?

The Witness: Yes, sir.

Q. (By Mr. Abbott): Is the entire statement of four pages written by you, in your own handwriting? A. No, sir, it is not.

Q. Is it a document which you read and signed on the date which it bears? [444]

A. Yes, sir.

Q. Has there been any change or alteration on its face since the execution by you?

A. I see no evidence of any.

The Court: Next question.

Mr. Abbott: We offer the document, Plaintiff's Exhibit 13 in evidence.

The Court: Any objection?

Mr. Nelson: No objection.

The Court: Received in evidence.

(The document referred to, marked Plaintiff's Exhibit No. 13 for identification, was received in evidence.)

Mr. Abbott: I request permission to read a portion thereof to the jury, commencing at the bottom of page 2, and continuing on to the top of page 3.

The Court: You may.

Mr. Abbott: (Reading.)

"I do not recall whether I was presented with the papers which was to have cleared the plane for sale to them. As I recall one of the Finns, whom I believe was Charles Finn, showed me a permit

(Testimony of Peter A. Bancroft.)

from the Civil Aeronautics Administration, which would allow the plane to be flown to Burbank, California. I was told that the permit would not have been granted unless the CAA was satisfied that all [445] legal restrictions had been removed. I was also told by one of the Finns that they had other papers beyond the ferry permit but they they did not desire to show these because they felt that if the method that they had used to obtain them was known, that other people interested in buying planes could follow the same procedure. From a business standpoint they felt they had done the ground work and should have the benefit rather than share it with someone else. It was our understanding that the plane was not to leave Burbank until all the terms of our agreement had been met." That concludes the Government's examination, your Honor.

The Court: Any further questions of Mr. Bancroft?

Mr. Nelson: Yes, your Honor.

Redirect Examination

By Mr. Nelson:

Q. Calling your attention, Mr. Bancroft, to this other C-46 which we have referred to herein as the hulk, what was the condition of this aircraft at the time that it was sold to the Finns?

A. It had no gear. It was on blocks on the ground.

(Testimony of Peter A. Bancroft.)

Q. By "gear," will you clear that up?

A. Wheels and struts; had no ailerons, or other control [446] surfaces. The cockpit and cabin had been completely dismantled. The plane had been dropped upon its belly, if you will excuse the term, and crushed, and I think it is evident that the belly is a part of the structure of the plane, and if that is damaged, it is serious.

In fact, we had people come in and look at it, and just shake their heads, and say, "No, it has no value. It will take a fortune to fix it."

The control cables had been severed. It was really in poor condition, and as far as we ever thinking that it could be flown, it was out of the question.

Q. Did the district have any thought or idea of using that aircraft in that condition for educational purposes at that time?

A. Not in that condition, no, sir.

Q. At the time this aircraft was sold to the Finns, which you indicated was a few months prior to the agreement in question with the Finns, did the district at that time have any idea that it was going to sell the subject aircraft that was being used for a classroom?

A. No, sir.

Q. Was there any discussion with the Finns at the time this hulk was sold to the Finns of the possibility of selling the other aircraft to the Finns?

A. No, sir. [447]

Q. When you used the word "junk" in connection with this plane, this hulk, do you associate that word with the word "scrap"?

A. This word "scrap," as I understand it,

(Testimony of Peter A. Bancroft.)

doesn't mean what the reference in the Civil Code refers to. To me "scrap" means something that is surplus or has no value to the owner, but still could be in a very good condition for other purposes. "Basic material content" is an entirely different situation.

Q. Mr. Bancroft, I am not going to ask you at this time to go into trying to determine these various technical terms. Prior to this hearing, before we did get into such a discussion, what would have been your association of the word "junk" and the word "scrap," as a superintendent of schools?

A. Well, I assume they could have something in common, especially as far as we are concerned, with the plane, that we wouldn't want it any more.

The Court: And "scrap" would be high-grade junk; is that it?

The Witness: Yes, your Honor.

Mr. Nelson: No further questions. [448]

Recross-Examination

By Mr. Abbott:

Q. Did you ever assume that the hulk had been reduced to its basic material content?

A. Mr. Abbott, we just have gone through this matter of terms, and I am not an authority on terms. It had no value to us.

The Court: Let's not spend any more time on that.

Mr. Abbott: One more question, your Honor.

(Testimony of Peter A. Bancroft.)

Q. Was the statement which I have read from Plaintiff's Exhibit 13 correct as a matter of fact, as you now recall, Mr. Bancroft?

A. I found one word which I am not positive is correct, Mr. Abbott. In essence, it is correct. [449]

Q. What is that word?

A. The statement here, and which I have signed says that the Finns—maybe I can refer back to it. "I was told that the permit would not have been granted unless the CAA was satisfied that all legal restrictions had been removed. I was also told by one of the Finns that they had other papers beyond the ferry permit."

Now, that word "papers" is specific, and I wouldn't verify that the word "papers" was in the conversation. They had other information or evidence that these restrictions had been removed, but I wouldn't care to state there were other papers. I haven't seen them, and I don't think they referred to papers by that title.

Q. But, in any event, the rest of the material which has been read to you is correct, according to your present recollection as it is now refreshed?

A. Yes, sir.

Q. And, in particular, there is the statement, "they did not desire to show these because they felt that if the method that they had used to obtain them was known, that other people interested in buying planes could follow the same procedure."

Was that correct, according to your present recollection as refreshed?

(Testimony of Peter A. Bancroft.)

A. Yes, sir. They told us that they had spent considerable [450] time in Washington running this information down, that they had the information that was necessary, and that they were not interested in disposing of that information at the time, because other people also in the business, as Mr.—our expert, Mr. Duly, has testified—would get that information and obtain planes which they may know about, in addition to the plane in suit, and it was their desire to follow through, and they told us at the time they were interested in other aircraft, because they wanted to establish an airline of their own.

Q. Are you now telling me something more about the same conversation?

A. Merely in justification of the statement and about the conversation.

Q. That is something else that you recall about the conversation?

A. No, it is only that it has been signed here.

The Court: Who wrote this document, Exhibit 13?

The Witness: I believe Mr. Buxton of the Federal Bureau of Investigation.

The Court: In other words, Mr. Buxton came to you for the statement of the facts in this matter, and he himself wrote up Exhibit 13, after talking with you, and asked you to sign it?

The Witness: Yes, your Honor. And we went over it [451] again to see if there were any errors, and he made the statement that I was under no

(Testimony of Peter A. Bancroft.)

compulsion to sign, and I realized that. I did that voluntarily.

The Court: Any further questions of Mr. Bancroft?

Mr. Abbott: No further questions.

Mr. Nelson: No further questions.

The Court: You may step down, Mr. Bancroft.

(Witness excused.)

The Court: We will take the noon recess until 1:45, members of the jury, and again, before we separate, I must admonish you of your duty not to converse or otherwise communicate among yourselves or with anyone else upon any subject touching the merits of this trial, and not to form or to express an opinion on this case until after it has been finally submitted to you for your verdict.

You are now excused until 1:45 this afternoon.

(Thereupon the jury retired from the courtroom.)

The Court: Is it stipulated, gentlemen, that the jury have left the courtroom?

Mr. Abbott: So stipulated.

Mr. Nelson: So stipulated.

Mr. Blackman: So stipulated.

The Court: The record will so show.

Do you wish to make an offer of proof?

Mr. Abbott: I do, your Honor. [452]

The Government offers to prove by the witness, Peter A. Bancroft, that on or about March 9, 1951,

Mr. Bancroft received a bid in writing for the purchase of the aircraft in suit in the sum of \$28,000.

The Court: Cash?

Mr. Abbott: Cash. If the court will indulge me a moment, I am searching for the name of the offeror. That is from Guy Hardsell of San Fernando, California.

The Court: Any objection to the offer?

Mr. Blackman: We will object to the offer, your Honor, on the ground that at the time mentioned the airplane had been sold, and that any offer of this type would, therefore, be incompetent, irrelevant and immaterial; and, further, that there is no proper foundation shown as to any knowledge that Guy Harsdsell may have had as an expert witness regarding the value of the airplane. He is not here subject to cross-examination as to what he wanted to use it for, whether as an antique to put in his backyard, or to put in a flyable piece of machinery.

Mr. Nelson: If the court please, may we also join in the objection as stated by Mr. Blackman, and also point out to the court that this certainly cannot be an opinion of value, it cannot be any basis for value, and I have just been told that this gentleman, Mr. Guy Hardsell, is now dead, and cannot be examined in this matter in order to determine the foundation or the basis for which it was given. [453]

Mr. Abbott: I did not propose to lay the foundation by Mr. Hardsell, but by Mr. Bancroft, your Honor, and we will further purport to show by the

witness Bancroft that Mr. Hardsell was in the business of buying and selling surplus aircraft.

The Court: The same objection?

Mr. Blackman: The same objection.

Mr. Nelson: The same objection, plus the objection of hearsay, your Honor.

The Court: Sustained. Does that complete the offer?

Mr. Abbott: It does, your Honor.

The Court: The trial will be recessed until 1:45 this afternoon. Court will recess until 1:30.

(Whereupon, at 12:03 o'clock p.m. a recess was taken until 1:45 o'clock p.m. of the same day.) [454]

Friday, October 29, 1954; 2:15 P.M.

The Court: The case on trial, is it stipulated, gentlemen, the jury are present?

Mr. Blackman: So stipulate.

Mr. Nelson: So stipulate.

Mr. Abbott: So stipulated.

The Court: The record will so show. You may call the next witness.

Mr. Nelson: If the court please, during the noon recess the defendants Finn have handed me a letter, which is part of their files, entitled "Bill of Sale," concerning the hull aircraft, dated October 9, 1950. And for the court's review, we would like at this time to call Mr. Bancroft and submit this letter into evidence.

The Court: You may recall him.

Mr. Nelson: Mr. Bancroft, will you take the stand?

Mr. George C. Finn: Your Honor, may I state that any such participation on our part is to make sure no harm comes to any defendant on behalf of the Government in our refusal to go along with this.

The Court: You may proceed. [455]

PETER A. BANCROFT

called as a witness on behalf of the Vineland School District, having been previously sworn, resumed the stand and testified further as follows:

Mr. Nelson: May we have, at this time, this letter marked for identification as Vineland's Exhibit F?

The Court: It may be so marked.

Exhibit F was a film.

Mr. Nelson: Pardon me. This is G.

The Court: Is that correct, Mr. Clerk?

The Clerk: Yes, your Honor.

(The document referred to was marked Defendant Vineland's Exhibit G for identification.)

Mr. Nelson: Will the clerk please hand it to the witness? [456]

Q. (By Mr. Nelson): Mr. Bancroft, do you recognize the letter that has been placed before you, Exhibit G? A. Yes, sir.

Q. Does it contain your signature?

A. It does, sir.

Q. Do you recall having given this letter to the

(Testimony of Peter A. Bancroft.)

defendants Finn approximately the date that appears thereon? A. Yes, sir, I do.

Mr. Nelson: We ask the court to receive this in evidence at this time.

The Court: Is there objection?

Mr. Abbott: No objection, your Honor.

The Court: Received in evidence.

(The document referred to, marked Defendant Vineland's Exhibit G for identification, was received in evidence.)

Mr. Nelson: That is all I have, your Honor.

The Court: Any further questions of Mr. Bancroft?

Mr. Abbott: It will be very brief, your Honor.

Cross-Examination

Mr. Abbott: Mr. Clerk, will you place before the witness International's Exhibit T.

(The document was placed before the witness.)

Q. (By Mr. Abbott): Will you inspect the document placed before you, International's T, Mr. Bancroft? [457]

(The witness did as requested.)

Q. Have you completed your inspection?

A. Yes, sir.

Q. Can you state whether or not the aircraft

(Testimony of Peter A. Bancroft.)

described in that document is the aircraft referred to in this action as the hulk?

A. Would you restate that question?

Q. The document you are viewing describes an aircraft, does it not? A. Yes, sir.

Q. Is that the aircraft which we have referred to in this action as a hulk?

A. I believe it is, sir, because it is dated 1948, and we had the plane in suit in 1946.

Q. You have only purchased a total of two 46A aircraft, have you? A. Yes, sir.

Q. So that this necessarily must be one of the documents issued with respect to the hulk; is that correct? A. Yes, sir.

Mr. Abbott: No further questions, your Honor.

The Court: Any further questions of Mr. Bancroft?

Mr. Nelson: If the court please, the other day we noted that the Exhibit A, which was the specifications, was not attached to the agreement, and we desire at this time—— [458]

The Court: The agreement is?

Mr. Nelson: Exhibit B, Vineland's.

The Court: Vineland's Exhibit B.

Mr. Nelson: And if we may, your Honor, I would like to present that at this time, and attach it to Vineland's Exhibit B, so that that exhibit will be complete.

The Court: I suggest you complete it, and in view of the amount of participation by the defendants Finn, I suggest you lay a foundation by the

(Testimony of Peter A. Bancroft.)

witness, that this is a true copy, and it is necessary to complete Vineland's Exhibit B.

Mr. Nelson: Very well, your Honor.

Mr. Charles Finn: Your Honor, so as not to jeopardize the other defendants, we will participate in it.

The Court: Will you stipulate the document here is a true copy of what it purports to be, and that it may properly be attached to Vineland's Exhibit B, the agreement of February 28, 1951?

Mr. Charles C. Finn: Yes, your Honor.

Mr. George C. Finn: Yes, your Honor.

The Court: Do all the other parties so stipulate?

Mr. Abbott: So stipulated.

Mr. Blackman: So stipulated.

Mr. Nelson: So stipulated.

The Court: Very well. It may be attached. It will be attached and become a part of Defendant Vineland's School [459] District Exhibit B in evidence.

Mr. Nelson: I have no questions now of Mr. Bancroft.

The Court: You may step down.

Mr. Abbott: I have one question with respect to the document last marked, your Honor.

The Court: Very well.

Mr. Abbott: I will take a moment, because I haven't seen this document previously.

Mr. Clerk, will you please place Vineland's Exhibit B before the witness?

(Testimony of Peter A. Bancroft.)

(The document was placed before the witness.)

Q. (By Mr. Abbott): Mr. Bancroft, you are now viewing Vineland's B, now completed by the attachment of certain pages of specifications. You will note that certain of the items on the pages of specifications are marked with the letters, "Ok." Do you know how those letters were attached, and how they came to be placed on the document?

The Court: The letters "Ok"?

Mr. Abbott: Yes, your Honor.

The Witness: I would assume, Mr. Abbott—I think those are in my writing—that the copy which has been photostated here was probably a work copy that we had in our district, and that the okays must either refer to the submission of this material to the district as part of the completion, or the fact that these items being listed here would be correct [460] as to our thinking, as compared to some other possible list which we may have had.

Q. (By Mr. Abbott): Does that notation indicate that the work included within a particular item marked "OK" had been completed?

A. I would be inclined to say no, because if you will refer to page 2—do you have the same?

Mr. Abbott: I do not have a copy of the document, but with the court's permission, I will look at it at the witness stand.

The Court: You may.

The Witness: No, I am in error.

(Testimony of Peter A. Bancroft.)

Q. (By Mr. Abbott): Speak up.

A. I am in error, because there is one item under No. 9, page 2, under II, that states, "Paint exterior of plane," and I was going to refer to that as an item which had been done, and that happened to be with reference to the other plane, as I recall. I have to go back on that just a minute.

Yes, I believe that this does refer to the hulk airplane, and the fact that I believed at the time that this list of specifications—I would have to answer you probably no, because there is work that was done first on the plane, which is not referred to here, such as pertaining to the painting of the exterior of the plane. That was one of the first things done. [461]

Q. To the extent that Vineland's B does describe work to be done by the Finns, do the markings "OK" indicate that portion of the work which has been completed?

A. In answering your question, I would again repeat that it probably did not mean that, because one of the first things done was painting the exterior of the plane, and that is not marked "OK."

Q. Then do you know what the notation "OK" means at the various points where it appears on Vineland's B?

A. No. As I stated, it could have been referred to another list, as this was drawn up, or as we referred to it, apparently, of things that were in order, because of work that had been done prior

(Testimony of Peter A. Bancroft.)

to the items being delivered to the district, or being marked "OK."

Mr. Abbott: No further questions, your Honor.

Mr. Nelson: No further questions.

The Court: You may step down, Mr. Bancroft.

(Witness excused.)

The Court: The next witness for Vineland School District. [462]

Mr. Nelson: I wish to call at this time Mr. Walter Johnson.

WALTER L. JOHNSON

called as a witness by defendant Vineland Elementary School District, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Walter L. Johnson.

Direct Examination

By Mr. Nelson:

Q. Mr. Johnson, where do you presently reside?

A. In Bakers—well, in Weed Patch, you might say.

Q. Is it a rural address? A. Yes.

Q. What is your present occupation?

A. Farmer.

Q. Do you have any other occupations besides farming, such as an interest in another business?

A. No.

Q. Are you presently a member of the Vineland

(Testimony of Walter L. Johnson.)

School District Board? A. Yes.

Q. Were you a member of the Vineland School District [463] Board at the time the transaction occurred on the subject aircraft?

A. You mean in '46 or '51 or——

Q. Yes. Well, '46 and '51.

A. Yes.

Q. Both times? A. Yes.

Q. How long have you been a member of the Vineland District School Board?

A. I think this is my twelfth year.

Q. Are you duly elected by the people in the area? A. Yes.

Q. Are you presently the chairman of the Board of Trustees of that District?

A. Yes; this particular time.

Q. You heard the testimony this morning concerning—and all through this trial—concerning the various offers that have been presented to the District at different times, both by the Finns and other persons. Would you state to the court the reason for the District not accepting these other offers?

Mr. Blackman: Just a moment.

Mr. Abbott: Your Honor——

Mr. Blackman: I take it that counsel is limiting his question up to February 28, 1951. If that is his limitation, [464] I have no objection to the question.

Mr. Nelson: I will so limit it.

Mr. Abbott: We do have an objection, even so

(Testimony of Walter L. Johnson.)

limited. The court has ruled that Mr. Bancroft's subjective intention may be material. However, the intention of the Board of Trustees, the Government's view, is not material. It is the official acts which have a bearing on this proceeding.

Mr. Nelson: If the court please, the matter of intention of the Board of Trustees, which explain an ambiguity which appears in the agreement, is extremely in point.

The Court: What is the ambiguity?

Mr. Nelson: As read to the court this morning, on page 1 of the agreement between the District and the Finns, there appears a statement that the document shall pass title and possession to the aircraft upon execution. And then on page 4 appears the clause notwithstanding anything else in the agreement consents shall be obtained.

And I believe it is the position of the Government that the agreement in itself passes title, and we assert that there appears to be some ambiguity here in that respect. And, therefore, the intention of the Board, and the intention of the parties dealing with the Finns in connection with this agreement, as to when title was to pass, if at all, and whether it was conditional, is extremely important to this action. [465]

Mr. Abbott: If the court please, may the Government be heard? The agreement viewed as a whole conditions subsequent to the title on February 28, 1951.

(Testimony of Walter L. Johnson.)

The Court: Is the Government contending title passed subject to circumstances subsequent——

Mr. Abbott: But for the interest of the United States.

The Court: Yes.

Mr. Abbott: Yes.

The Court: Does the Vineland School District dispute that?

Mr. Nelson: Yes, they do, your Honor. To them it is a condition precedent that these matters be done; the matters shall be performed.

The Court: Subjective intention wouldn't control, would it? It would be the objective manifestation intention that would control. You may show all the circumstances surrounding the agreement. As I presently view the matter it would not be material in the slightest what these trustees thought about it a week before they entered into the transaction; might have changed their mind. The matter was in their discretion, I assume.

Sometimes the mere offer may prompt a seller to think of selling where he never thought of selling before.

Mr. Nelson: Well, that is correct, your Honor. I don't quite see the argument that is being presented. It still [466] appears to be important from the standpoint of the District, whether or not it is a condition precedent or subsequent.

The Court: It may well be. But what would the reasons for the District not selling have to do with it? They might have turned down a dozen offers

(Testimony of Walter L. Johnson.)

the week before that were better than this one; might have passed them by. But the fact that they were getting those offers alone might have prompted them to think, "well, let's sell this."

I don't perceive there is any pertinent inquiry for the court to attempt to open the minds of these trustees to see what they think about when they turned down the others.

Mr. Abbott: On the condition subsequent point, your Honor——

The Court: If the School District had title it is none of the Government's business. It sold or didn't sell when it did.

Mr. Nelson: It would be the Government's business to this extent: if they have not actually sold as yet because the conditions haven't been performed, there hasn't been a sale in violation of the agreement.

The Court: I don't think it is competent for the seller to get on the stand and say, "I didn't think I was doing that"; any more than he could get on when he signs the promissory note, he can't be heard to get on the stand and say, "I didn't really think I was obligating myself to pay. I [467] didn't intend that." What he objectively manifested, that is what we are to judge his intention by.

The objection will be sustained.

Mr. Nelson: Will the Vineland's Exhibit A be placed before the witness?

Q. (By Mr. Nelson): I call your attention, Mr. Johnson, to paragraph IV, Roman numeral IV. of

(Testimony of Walter L. Johnson.)

the agreement, and the following language contained therein:

“It is expressly agreed and understood that this agreement is contingent upon the contractor’s ability to secure the necessary clearances from the Government of the United States of America on restrictions now existing on the use and possession of the aforesaid aircraft——”

Strike that. I am reading the agreement instead of the note.

The Witness: That is what I thought. That doesn’t correspond to anything I had.

Q. (By Mr. Nelson): To the following language in the notice, Mr. Johnson, in the middle of paragraph I:

“Bidders are expressly notified that the aforesaid aircraft was acquired by the District from the Government of the United States and the War Assets Administration, subject to certain restrictions in the use thereof under the deed of conveyance. [468] The successful bidder will be required to secure the necessary releases to said restrictions from the proper governmental agency of the United States.”

What was the District’s purpose in placing this cause in the notice?

Mr. Abbott: The same objection. The notice

(Testimony of Walter L. Johnson.)

speaks for itself and what subjective purpose may have existed is immaterial.

The Court: It seems very obvious, doesn't it?

Mr. Nelson: It does to me, your Honor, yes.

The Court: Very well. The purpose is manifested by the language, and the language is not thought to be ambiguous, is it?

Mr. Nelson: There is some allegation there, I believe, your Honor, on the part of the Government that perhaps—not on the notice. It would be in the agreement.

The Court: Of course, whether a condition is a condition precedent or condition subsequent is a very troublesome problem whenever it arises. That is the reason I was asking Mr. Finn about that book on conditions subsequent yesterday. I thought we might need it before we finished the case.

Mr. Nelson: Yes, your Honor. And I thought it might be helpful to get the statements of the Board as to what they believed it did contain when they entered into the agreement.

The Court: I don't think it would be competent for [469] them to say.

Mr. Nelson: Very well.

Q. (By Mr. Nelson): Mr. Johnson, did the Board of Trustees ever give the defendants Finn a bill of sale on the subject aircraft? A. No.

Mr. Nelson: Answer orally. The reporter can't take a nod of the head.

Mr. Abbott: May we have a clarification as to

(Testimony of Walter L. Johnson.)

form, counsel? Authorized or delivered the bill of sale?

The Court: Does the District maintain Mr. Bancroft had no authority to give the bill of sale, which is Exhibit—part of International Airports' Exhibit A here?

Mr. Nelson: We do so maintain, your Honor. And we wish at this time to establish that although the Board of Trustees and Mr. Bancroft believed they had that authority and they acted properly, that their actions were not in accordance with the California Statute.

The Court: Now, the question now pending, you do not wish to ask, do you?

Mr. Nelson: Yes, I do.

The Court: It is admitted by all sides that the School District gave no bill of sale, is it not, as such? That is, there was no bill of sale executed by the District.

Mr. Abbott: The bill of sale, I believe, your Honor, [470] reads Vineland Elementary School District by Peter A. Bancroft, or words to that effect; purports to be the action of the District.

The Court: My recollection, from a cursory examination of it, it reads Peter Bancroft, superintendent. I suggest you examine it and see if there is any issue as to that.

In the meantime, do you expect to ask him whether the Board of Trustees authorized Mr. Bancroft to issue the bill of sale?

Mr. Nelson: I will not ask that direct question,

(Testimony of Walter L. Johnson.)

which may bring in the legality question. But I will show the actions of the Board were not proper, your Honor.

The Court: That is a question of law, isn't it? It wouldn't be competent for this witness to say, "We did it, but it wasn't legal."

Mr. Nelson: Exactly, your Honor. I am not going to ask him that question; merely facts which will show the fact that although it thought it was acting properly, it was not.

The Court: Isn't that a question of law?

Mr. Nelson: The ultimate question is, your Honor; but the factors leading up to it, I desire to make a record on it, your Honor.

The Court: Well, the pending question calls for a conclusion of law, and I will sustain an objection to it in [471] that form.

Mr. Nelson: All right.

Q. (By Mr. Nelson): Did the Board of Trustees, Mr. Johnson, ever discuss with Mr. Bancroft the issuing of this bill of sale which is being discussed?

A. Yes. I don't know as a board. I mean, what I would call a governing board within our school. There was several discussions.

Q. You did discuss it with him? A. Yes.

Q. Was that discussion carried on at a formal meeting of the Board?

A. Yes, it was formal.

Q. Was it in accordance with the regular meeting that you have every month at a specified time?

(Testimony of Walter L. Johnson.)

A. No, I don't think so.

Q. Did you receive any notice that a special meeting was going to be called for that purpose?

A. No, no. I am almost positive to that.

Q. Do you recall where this meeting occurred?

A. Well, not exactly; definite. It could have happened at the Vineland School or could have happened at the Sunset School. I remember talking about it. But to pin it down to specific place, I am not sure about that.

Q. Was it the type of meeting that the public is [472] invited?

Mr. Blackman: I will object to the form of that question; with respect to the type of meeting. I don't know——

Mr. Nelson: I will withdraw the question.

Q. (By Mr. Nelson): Was the public invited to this meeting? A. No, no.

Q. Calling your attention——

The Court: Is there any prohibition in the state law that forbids the Board of Trustees to get together and hold a meeting any time they wish?

Mr. Nelson: The only prohibition that appears in that connection was one passed by the '51 legislature of California which sets forth that a notice must be given to local newspapers and radio stations whenever there is going to be any type of a special meeting. There is still——

The Court: What about a television station?

Mr. Nelson: I imagine that would come into the

(Testimony of Walter L. Johnson.)

same category, your Honor. And only then when these agencies request that notification.

The only other requirement for being—for a special meeting, that notice was to be given to each Board member at the time that they appear.

The Court: Do you construe those to be mandatory provisions? [473]

Mr. Nelson: I do, your Honor.

The Court: Then if the Board of Trustees wanted to meet and couldn't get a notice to, say, Station WXYZ, the meeting would be invalid, or they couldn't hold it?

Mr. Nelson: Yes, your Honor. However, I will state——

The Court: Is there any precedent for that?

Mr. Nelson: It is a brand new law. I doubt if there are any cases.

The Court: It would take some very clear language to make me believe the legislature intended to invalidate a meeting because some radio station couldn't be notified.

Mr. Nelson: I believe the position of the court is well taken, and I would argue the same position. In this particular case we are not going to hold, or even attempt to try to prove to the court there was an invalidating of the meeting due to this '51 Legislature Act, but numerous cases which have been cited in our law brief, which point out that a meeting must be a public meeting and must be either a regular meeting or a meeting called by special notice in accordance with California statutes,

(Testimony of Walter L. Johnson.)

and that is our allegation here. It seems clear that the Board met. They discussed this matter. And I have no doubt that out in Vineland School District they felt it was a proper meeting of the Board, and they were acting in accordance with the law. But unfortunately Board members don't always know technical provisions of the [474] law. It is difficult enough for us to diagnose those matters out.

The Court: You mean the law of California.

How many members on the Board? Five?

Mr. Nelson: Three at the time; and now there are five.

The Court: Three. All three of them happen to meet in the hallway of the school and all three agree, "We are going to hold a meeting right here and now." The California law forbids them to do so?

Mr. Nelson: Exactly, your Honor.

The Court: I would have to be persuaded very strongly to find that.

Mr. Nelson: I call your Honor's attention to 2204 of the Education Code in connection therewith, and cases which we have pointed out in our brief which hold just that.

The Court: Invalidate a meeting unanimously called?

Mr. Nelson: Invalidate whatever the actions the Board took at that meeting; not a meeting, special meeting called for a purpose——

(Testimony of Walter L. Johnson.)

The Court: What about before the public? How much notice has to be given?

Mr. Nelson: 25 hours. Now, I will point out to the court an exception. If the Board meets and waives notice, it will be proper as long as those meetings are proper and aren't in the halls; not over the telephone. [475]

The Court: Well, the hallway would be public, wouldn't it?

Mr. Nelson: We hope so, your Honor.

The Court: I am not impressed by that sort of technicality.

Mr. Nelson: Frankly, I am not, either, your Honor. But I do believe it is the law.

The Court: Human beings don't act that way, and particularly, if they are a friendly meeting on fairly semi-formal basis, unless the law required it, I would not be inclined to so hold.

Mr. Nelson: I think the court's position is well taken. We have pointed out the law in our brief, however, and we ask that it be reviewed.

The Court: Very well.

Q. (By Mr. Nelson): When the ship was removed, Mr. Johnson, by the defendants Finn, was it the intention of the Board that the plane would be brought back, if necessary?

A. Yes. We were so informed, any time that we wished the plane to be back, if the agreement wasn't fulfilled, why, we—we were under the impression, when it flew off, it was going to be repaired.

Q. Would the Board have allowed the plane

(Testimony of Walter L. Johnson.)

to be removed by the Finns if they felt it would not be returned?

Mr. Abbott: I object. There again is the inquiry into [476] the subjective intent of the Board. There is a formal document which embodies the school's intent. The document is complete on the face and lawyer-drawn. It may be a question of waiver, and that would be a question of voluntary relinquishment of a known right.

The Court: Overruled. You may answer.

The Witness: Will you repeat that?

The Court: Please read it, Mr. Reporter.

(Question read.)

Mr. Nelson: I will rephrase it.

Q. (By Mr. Nelson): Would the Board of Trustees have allowed the Finns to remove the plane at the time they did if they had any knowledge that it would not be returned?

A. No, we would not.

Q. Who told the defendants Finn they could fly the plane off?

A. Mr. Bancroft, I believe.

Q. Did Mr. Bancroft meet with the Board of Trustees and discuss that matter before he allowed the Finns to fly it away?

A. Yes, we were so informed, yes.

Q. Was that at the formal meeting of the Board?

A. No, no. I think we were called around, maybe different ones, as to what the purpose was, and all.

Q. Did you tell Mr. Bancroft at that time it

(Testimony of Walter L. Johnson.)

was all [477] right with you as to letting the plane go? A. Yes.

Q. And what was the basis for which you allowed this plane to be flown off?

A. Well, the Finns had been working on this plane and they told us if they could take the plane down to Los Angeles and work on it that it would be safe. They had an awful lot of expense because they were hauling their parts back and forth up there, and we felt that they had always been fair with us, and everything, and we just figured it would be all right because they told us any time it would be flown back at our request. [478]

Q. Then was it the board's understanding that the Finns were to take the aircraft off only for the purpose of doing work on it down in Los Angeles? A. That is right.

Q. And that it would be returned to the district if any of the conditions had not been performed or consents obtained? A. Yes.

Q. And this meeting which you referred to, wherein you told Mr. Bancroft that it would be all right to let the Finns take the plane, occurred at the Vineland School or the Sunset School?

A. Well, now, I am not sure. It could been at the Vineland, or could have been at the Sunset, or it possibly could have been at one of the service stations or stores there. Definitely, I couldn't say any particular place where this meeting took place.

Q. Was it a meeting wherein the public was invited?

(Testimony of Walter L. Johnson.)

A. No, it was not a meeting of that sort. It was just a quick get-together.

The Court: Was the public excluded?

The Witness: The public wasn't. I don't know whether the public was even informed, or anything. We just met right quick.

The Court: If any of the public happened along that day, [479] could they have stayed there?

The Witness: I guess they could have heard the discussion, I guess. Yes, they could have done that.

Q. (By Mr. Nelson): Did the meeting occur at your regular meeting date?

A. No. If that occurred, it would have been a regular formal meeting, advertised meeting.

Q. Did you receive a notice of such a meeting?

A. No.

Q. Calling your attention to the other C-46 aircraft which has been discussed here today, commonly called here in the courtroom the hulk, what was the condition of this hulk at the time that it was resting on the school district grounds, and prior to being sold to the defendants Finn?

A. Well, I don't know what you mean by condition, but so far as the looks of an airplane, why, it was nothing.

Q. Were there any parts removed therefrom?

A. On the hulk?

Q. Yes. A. There was no parts on it.

Q. Were there any engines on it? A. No.

Q. It was merely a shell of an aircraft, such as the fuselage, and the wings, and the tail?

Testimony of Walter L. Johnson.)

A. Yes. [480]

Q. Did you have any idea at the time the aircraft—and when I say “you,” I refer to the board of trustees—at the time of the sale of the hulk to the Finns that you were going to sell the subject aircraft?

A. You mean, the time we sold the hulk, did we intend to sell the other aircraft we had?

Q. Yes. A. No, not at that time, no.

Q. Did you have any thoughts in that connection at all? A. No.

Mr. Nelson: No further questions, your Honor.

The Court: Any cross-examination of Mr. Johnson?

Mr. Blackman: Yes.

Cross-Examination

By Mr. Blackman:

Q. Mr. Johnson, these informal get-togethers that you told us about here, so far as you were concerned, there wasn't anything that was strictly private about them, was there?

A. No, I don't remember as anything being private about them. They were just a discussion.

Q. In other words, they were open to the public if anybody wanted to come along and had come along at that time?

A. I suppose if they had walked by wherever we were, [481] they could have heard, if they wanted to, because there was nothing secret.

(Testimony of Walter L. Johnson.)

Q. With respect to these get-togethers, when the board of trustees met informally, as you described, did anyone ever raise an objection because there had not been some 24-hour notice given?

A. I don't think so. We were having so many different types of get-togethers, and on different things, that——

Q. Well, as a matter of fact, I think it has already been suggested by your counsel, you didn't even know about that requirement being in the law at that time; isn't that true?

A. No, we sure didn't.

Q. And at the time that the Finns flew the airplane off, you had no reason to believe that they didn't have the consents that you were talking about in your contract, did you?

A. I don't get that. I don't know what——

Q. You remember when Mr. Bancroft contacted the board, and suggested that the Finns wanted to take the airplane from the school district down to Los Angeles to have someone work on it?

A. Yes.

Q. Do you remember you stated that the board had gotten together at an informal meeting?

A. Yes. [482]

Q. Well, at that meeting, did you tell Mr. Bancroft, "Well, it is all right with us. Let them take the airplane off"?

A. Yes, for that purpose, that they wanted to use it for.

(Testimony of Walter L. Johnson.)

Q. So far as you personally were concerned at that time, you had no inkling that a proper consent had not been obtained from the Government, did you?

A. No, we didn't.

Mr. Blackman: I have no further questions of the witness. Your Honor, I do not for a moment concede that the proper consents have not been obtained. I just put the questions in that form.

The Court: Did your board ever meet and ever exclude members of the public from attendance?

The Witness: Not at our regular meeting. Anybody can come into our regular meetings.

The Court: What about your special meetings? Did you ever exclude the public?

The Witness: No.

The Court: Affirmatively?

The Witness: No.

The Court: Ever tell anyone they couldn't come in?

The Witness: No; no. [483]

Cross-Examination

By Mr. Abbott:

Q. Mr. Johnson, did you have any conversation, and by "you," I mean the board of trustees, with the Finns on the question of whether or not they would encumber the aircraft in suit after removing it on October 26, 1951?

Mr. Nelson: Objection, your Honor, to the word "encumber." Perhaps if the witness knows what it

(Testimony of Walter L. Johnson.)

means, it would be proper, but I am not too sure I know what it means .

Q. (By Mr. Abbott:) Do you understand what I am asking you?

A. No, I was fixing to ask you.

Q. Would you understand what I meant if I said a lien? A. A what?

Q. A lien? A. A lien?

Q. How about a mortgage?

A. Yes, that is better.

Q. You know about a mortgage on personal property? A. Yes.

Q. Was there any discussion by the board of trustees with the Finns as to whether the Finns might mortgage the airplane in suit, after removing it, or before removing it from Vineland?

A. No, sir, there was never such. I never knew anything [484] about it.

Q. Did they seek your permission to mortgage it? A. No; no.

Q. Did they ask your permission to incur any debt that might be charged against the airplane of any kind?

A. You mean for the district or for——

Q. Well, to incur a personal debt, which could be charged against the airplane in suit?

A. No.

Mr. Abbott: Will the clerk please place before the witness Vineland's G.

(The document was placed before the witness.)

(Testimony of Walter L. Johnson.)

Q. (By Mr. Abbott): Have you inspected Vine-land's G? A. Yes.

Q. You will note that that appears to be a bill of sale to the aircraft in suit, dated October 9, 1950.

A. Yes.

Q. Did the board of trustees at any meeting discuss with Mr. Bancroft the execution of that bill of sale for the board?

A. Well, I don't remember. For sure, I couldn't say. Offhand, no, I couldn't. I couldn't say whether we did or whether we didn't.

Q. Do you recall discussions in October, 1950, relative to sale of the hulk to the Finns? [485]

A. To the Finns—discussion with the Finns?

Q. Yes, sir.

A. Well, I remember there was—we talked of selling this thing, but at the time we were talking about it, we didn't know what we could get out of it. We was wanting to get it away from the school, and trying to get something out of it, too, but there seemed to be nobody interested. Now, just when we had our discussion with the Finns, I am not—I don't know about this.

Q. Well, the board did instruct Mr. Bancroft to transfer the hulk to the Finns sometime in the fall of 1950, did it not?

A. I am sure we did.

Q. And to execute a proper document for that purpose?

(The witness nodded in the affirmative.)

(Testimony of Walter L. Johnson.)

Q. The reporter does not pick up your nod, Mr. Johnson. If you would speak up, it will help.

A. Yes, so far as I know.

Mr. Abbott: Mr. Clerk, will you please put before the witness Government's Exhibit 12.

(The document was placed before the witness.)

Q. (By Mr. Abbott): Have you inspected Government's 12. Mr. Johnson? A. Yes.

Q. And that appears to be a bill of sale dated March [486] 28, 1951, on the hulk, does it not?

A. Gee, I wouldn't know whether it was a hulk, or what. It doesn't say "hulk" on here.

Q. Well, do you recognize the serial number that appears on the bill of sale?

A. No, sir. I wouldn't even know whether the plane had a serial number, as far as I am concerned.

Q. Well, the testimony that has come in before this time has fixed that as the bill of sale for the hulk.

A. That is what I heard, in other words, here.

Q. Yes. Now, do you know of any reason, based upon a meeting of the board of trustees, why Mr. Bancroft would give a second bill of sale on the hulk a month after the date of the execution of the agreement of February 28, 1951, Vineland's B?

A. No, sir, I don't know. I couldn't point to any particular thing about it, why.

Q. Of course, in your discussion with the Finns

Testimony of Walter L. Johnson.)

which led to the execution of Vineland's B, the agreement of February 28, 1951, you all contemplated that the hulk would be returned to the school, didn't you?

A. You mean back in the exchange for this other plane?

Q. Yes, sir. A. Yes.

Q. Do you ever recall in any meeting authorizing, as a [487] body, Mr. Bancroft to execute a second bill of sale on March 28, 1951, or at any time after February 28?

A. Well, I couldn't say. I don't remember it. I wouldn't say we didn't, but I will say I don't remember. I am not sure.

Q. And you can't think of any reason why there could even have been an authorization for that, can you, sir?

A. Not offhand, I can't. No, I couldn't say.

Q. You expected and still expect to retain the 9-plane at Vineland as a schoolroom?

Mr. Nelson: I object to the words "9-plane."

Mr. Abbott: Yes, I will correct that.

Q. (By Mr. Abbott): The hulk?

A. The hulk, yes, sir.

Mr. Abbott: No further questions.

The Court: Any further questions of Mr. Johnson?

Mr. Nelson: No further questions.

The Court: You may step down, Mr. Johnson.

(Witness excused.)

The Court: Your next witness for Vineland School District.

Mr. Nelson: That rests our case, your Honor.

The Court: Very well. So far as International Airports is concerned?

Mr. Blackman: Yes, your Honor. I will call Mr. George [488] Batchelor to the stand at this time.

GEORGE BATCHELOR

called as a witness for the defendant International Airports, Inc., having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: George Batchelor.

The Clerk: How do you spell the Batchelor?

The Witness: B-a-t-c-h-e-l-o-r.

Direct Examination

By Mr. Blackman:

Q. Mr. Batchelor, will you state your occupation, please?

A. I am general manager of International Airports.

Q. And what is your background in the field of aviation?

A. I have been actively in aviation for over 15 years.

Q. Are you a flier? A. Yes, I am.

Q. Did you have any service experience?

A. Yes, sir.

Q. As a flier?

(Testimony of George Batchelor.)

A. Yes, I was in the Air Force.

Q. Since the end of the war, what is your background in the field of aviation? [489]

A. I have owned and operated airplanes. I operated an airline, and bought and sold, overhauled and dealt in airplanes, aircraft, and aircraft parts, all in the field of aviation.

Q. Yes. Now, when did you assume your duties as general manager of International Airports?

A. In 1953.

Q. Prior to that time were you in any way associated with International? A. Yes, sir.

Q. Did you have your own business as an aviation consultant before that time?

A. Yes, I did.

Q. As such, did you give your services or render services for International? A. Yes, sir.

Q. Did you do so in connection with the Finn transaction? A. Yes, sir.

Q. Now, International operates at Lockheed Air Terminal?

A. Lockheed Air Terminal, Burbank.

Q. And what is the general nature of their business?

A. Principally, it is an aircraft maintenance company. They buy, sell, overhaul, lease aircraft; anything in aviation. [490]

Q. Do you utilize mechanics in the shop?

A. Yes, sir.

Q. And people who are specialized in the various fields that require work done on airplanes?

(Testimony of George Batchelor.)

A. Yes.

Q. This business of yours, is that considered to be quite competitive?

A. It is very competitive.

Q. You would not call it a monopoly in any way, would you? A. No, sir.

Q. Now, drawing your attention to the aircraft which is the subject of this litigation, when did you first personally view that airplane?

A. Sometime in 1950.

Q. Where was it at that time?

A. It was on an airstrip near Bakersfield, California, at Sunset School.

Q. How did you get word of it?

A. A pilot that had previously worked for me told me that he had seen a couple of airplanes there.

Q. As a result of that you flew up there, did you? A. Yes, sir.

Q. Did you see it up there on more than one occasion? A. On two occasions. [491]

Q. How long elapsed between the first and the second time? A. Oh, perhaps six months.

Q. Did you speak to anybody at Sunset School the first time you were there? A. No, sir.

Q. How long were you on the ground at that time?

A. The first time just perhaps five or ten minutes.

Q. Did you get out of your airplane?

A. I don't think we did. There was no one around.

(Testimony of George Batchelor.)

Q. And the second——

A. (Continuing): I may have.

Q. I am sorry?

A. I don't think we did.

Q. And the second time you were there, did you speak to anyone? A. Yes, sir.

Q. To whom did you speak, if you recall?

A. Well, I know now it was Mr. Bancroft.

Q. Did you have a conversation with him at that time? A. Yes, sir.

Q. Was there anyone else present?

A. Yes, sir.

Q. Tell us who was present on the occasion.

A. Well, I can't remember the name now of the other [492] party.

Q. Someone with you? A. Yes, sir.

Q. Or someone with him?

A. Someone with me.

Q. Now, I am not too sure of the time when this took place.

A. Well, it was in the summer of 1950, and it was on a Sunday afternoon.

Q. Very well. Will you tell us, as nearly as you can recall, what was said by any of the parties?

A. Well, after we landed at the strip, Mr. Bancroft came out and met us, I believe in a jeep, and I asked him if the C-46 was for sale. He told me, no, it wasn't. And then we all went swimming.

Q. And you left the same day?

A. About two hours later.

(Testimony of George Batchelor.)

Q. Did you know Mr. Bancroft by name at that time? A. No, sir.

Q. Had you ever met him before?

A. No, sir.

Q. Did you ever know him since that time up until the time, oh, perhaps within the last two months or so? A. No.

Q. Did you ever hear about that particular aircraft [493] again, so far as you personally were concerned, up until the time that you were first contacted by one of the Finns?

A. Not that I can recall.

Q. All right. When was it, Mr. Batchelor, that you first made contact with one of the Finns?

A. In the late summer of 1951.

Q. Had you ever met them before?

A. No, sir.

Q. Did you know them by name before you were contacted by them? A. No, sir.

Q. Where did you first meet them?

A. I met one of them at Lockheed Air Terminal in Burbank, and they contacted me.

Q. And was the subject of this airplane in suit discussed? A. Yes, sir.

Q. Will you tell me, as nearly as you can recall, what was said with respect to this airplane?

A. Well, they contacted me and told me that they had bought the C-46, or bought a C-46, they owned one, and they wanted to sell it, and I asked them what they wanted for the airplane, and, as I remember it, they said \$55,000.

(Testimony of George Batchelor.)

I am not sure whether this was on the same day or not. It was within one or two days of each other. And they showed [494] me some pictures of the airplane; at least, my recollection is that they showed me some pictures of the airplane, and, as I remember it, we offered them \$50,000 for the airplane.

Q. Was anything consummated as a result of that offer?

A. Well, at first, we thought it was. I don't recall just now which one of the twins or the Finns that it was that I talked to. We tentatively made a deal, or I understood we did, but he did qualify it by saying that he had to talk to his brother first. And a few days later he came back and said they didn't want to sell the airplane, so nothing happened upon that.

Q. In offering the \$50,000, what was your intention as far as the use of the plane is concerned at that time?

A. Well, at that time International had just completed some work in the shop, and they needed some additional work. It was primarily to keep the men working, and also to overhaul the airplane, and lease it out, and so forth.

Q. Overhauling and licensing airplanes is also a part of International's business?

A. Yes, sir, primary business.

Q. And was at that time? A. Yes, sir.

Q. Also, leasing of airplanes? A. Yes, sir.

Q. In any event, when the Finns stated that they

(Testimony of George Batchelor.)

did [495] not wish to sell the airplane to you, did you talk about any other kind of a transaction?

A. I don't believe the same day, but a day or two later they brought a list of specifications that they wanted to have the airplane brought up to, overhaul specifications, and asked us to submit a bid for doing the overhaul on the airplane.

Q. And did you do that?

A. Well, we started negotiating on it, and from that we entered into other agreements with them, whereby we agreed to overhaul the airplane and take a mortgage on it, and loan them some money. They were to furnish certain parts and equipment for the airplane with the money.

Q. Whatever they were to do and you were to do was all set forth in some written paper, was it not?

A. Yes, sir.

Q. And those written papers, those writings or documents are the same ones that have been introduced into evidence in this trial up until this point; isn't that true? A. Yes, sir.

Q. I refer now to the aircraft chattel mortgage, which is International's B; the promissory note secured by a chattel mortgage, International's C—the agreement dated August 31st between International and the Finns, which is International's Exhibit E—the lease of aircraft, dated the same date [496] International's G, and certain supplements to the lease and the agreement, which are International's H and I, respectively, and at the time those papers were

(Testimony of George Batchelor.)

signed up, did you deliver to the Finns International's check for \$15,000?

A. Well, I know that it was delivered to them. I don't know that I handed it to them.

Q. Someone in the organization did?

A. Yes, sir.

Q. At your direction?

A. Yes, sir. I did all the negotiations with them.

Q. Well, now, at the time you handed them the \$15,000, or, let's say International handed them the check for \$15,000, had they shown you any evidence of their ownership of the airplane?

A. Yes, sir, they had.

Q. And what evidence did they show you?

A. CAA registration.

Mr. Abbott: We will object, your Honor, unless the form of the question is changed. If the question is what documents were shown, we run right into the language of the Civil Aeronautics Act. The witness started to describe the registration certificate, which, under the Act, is no evidence of title.

Mr. Blackman: Your Honor, I have no intention of running counter to the Act. I do not believe the form of the [497] question does run counter, but it calls for evidence shown this witness.

The Court: It is a conclusion as to what constitutes evidence.

Mr. Blackman: Just what they showed him.

The Court: Why don't you ask them what they showed him?

Mr. Blackman: Very well. Thank you.

(Testimony of George Batchelor.)

Q. (By Mr. Blackman): What did either of the Finns show you with respect to title of the airplane?

A. They showed me a CAA registration certificate that had been signed and returned from Washington, showing the plane to be registered in their name.

Mr. Blackman: Mr. Clerk, will you lay before the witness International's Exhibit A, please.

(The document was placed before the witness.) [498]

Q. (By Mr. Blackman): Is a certified copy of that registration certificate, which was shown you, attached to Exhibit A?

A. Yes, sir. Well, it is the same one, but this photostat has some writing on it that wasn't on the copy that I saw at the time. I don't remember it, anyway.

Q. Is more than one there, Mr. Batchelor?

A. There are three here.

Q. Do they all bear the same date?

A. No, sir. Yes, they do. Yes, they all bear the same date.

Q. Is there one there which bears no writing?

A. Well, I am sure that the one I saw is the one that had the writing added onto it later.

Q. What does that writing say?

A. It says, "Letter sent to C.A., for correction."

Q. Now, when you saw the registration for this

(Testimony of George Batchelor.)

airplane, which is a part of International's A, what did that registration certificate mean to you?

A. Well, it meant all the necessary chain of title had been submitted to C.A., and that title was clear and they issued a registration back for the application.

Q. And was there anything said about who they bought the airplane from? Not on the registration certificate. I mean in this transaction here leading up to the payment of [499] the money.

A. I believe they did state the airplane was purchased from the Vineland School.

Q. And have you had occasion to register title to airplanes before? A. Many times.

Q. And in order to obtain a registration certificate from the C.A.A., what, if anything, was true about submitting the prior bill of sale?

A. Well, you have to establish a chain of title from the last registered owner of the aircraft, in Washington, to the present owner, whoever it is going into.

Q. And if previously unregistered aircraft, what then?

A. Well, from whatever governmental agency or whatever department, you have to set up a chain of title. For example, from War Assets to whoever bought it; can go through three or four hands before it is registered the first time. If you have the bills of sale they record them and give you a clear title.

Q. And after the war had you purchased airplanes from War Assets Administration?

(Testimony of George Batchelor.)

A. Yes, sir.

Q. And registered title to it? A. Yes, sir.

Q. And operated the airplane? [500]

A. Yes, sir.

Q. In connection with your airline and otherwise? A. Yes, both.

Q. And had anyone ever questioned the registration certificates you have obtained?

A. Never before.

Q. Had you sold the airplane?

A. Yes, sir.

Q. Delivered title? A. Yes, sir.

Q. As far as you know, has anybody ever come back to you? A. Never have.

Q. Mr. Batchelor, would you ever have permitted International to loan \$15,000 on this airplane if you didn't have the registration certificate which you have just referred to, part of International's Exhibit A?

Mr. Abbott: Your Honor, that is entirely self-serving and subjective.

The Court: Overruled.

The Witness: Never.

Q. (By Mr. Blackman): Now, I will ask you, Mr. Batchelor, before the time that you had the \$15,000 check delivered to the Finns, did you take any other step to ascertain the condition of the title to this airplane? [501] A. Yes, sir.

Q. What did you do?

A. Well, I telephoned someone in Washington. I cannot remember who it was at this time. And

(Testimony of George Batchelor.)

asked that they check the title or the file in the C.A.A. and see that the title was clear and no liens or mortgages or encumbrances on the airplane. And they reported back to me that there wasn't any; the title was clear.

Then, after the rest of the deal was completed, why, we asked you to get a written report to that effect.

Q. So that at the time that you had International loan the money, you had the benefit of both the registration certificate and this telephone check to your source in Washington, is that correct?

A. Yes, sir.

Mr. Blackman: I have shown these documents to counsel, your Honor, and with the court's permission, may I ask that they be marked?

The Court: Yes.

Mr. Blackman: If they are marked in the order, Mr. Clerk, in which I have handed them to you, then I have a record of them.

Mr. Abbott: We do not know the order in which they have been handed to the clerk.

The Court: We will take the afternoon recess and the [502] clerk will mark them during the recess.

You are excused at this time, members of the jury, for five minutes' recess, subject to the usual admonition.

(Short recess taken.)

(Testimony of George Batchelor.)

The Court: Let the record show the jury are present.

Mr. Blackman: So stipulated.

Mr. Nelson: So stipulated.

Mr. Abbott: So stipulated.

The Court: Mr. Batchelor was under direct examination.

Mr. Blackman: Yes, sir.

Q. (By Mr. Blackman): Mr. Batchelor, are you familiar with any course of business in this industry with respect to buying and selling airplanes? A. Yes, sir.

Q. And would you say that the method that you followed, mainly, the registration certificate and this title check in Washington, is the usual method in the ordinary course of business with respect to buying and selling airplanes of this particular type?

A. Yes, sir, it is.

Q. And was this transaction, as far as International was concerned, in the ordinary course of business? A. Yes, sir.

Q. Now, did the Finns, up until the time that you had International deliver the check for \$15,000, say anything to [503] you about any restrictions on the resale of the airplane by the School District?

A. No.

Q. Did you know about any restrictions on the resale, if such restrictions, in law or in fact——

A. If I had known of any I wouldn't have tried to buy it from Mr. Bancroft.

(Testimony of George Batchelor.)

Q. And this Form 65 agreement which is Plaintiff's Exhibit 1 in evidence——

Mr. Clerk, will you lay that before the witness?

Q. Up until the time this action by the Government was commenced, Mr. Batchelor, in July of 1952, had you ever seen an agreement like that, or in any way resembling that? A. No, sir.

Q. And had you ever heard of a scrap warranty clause, as such, up until that time?

A. No, sir.

Q. And when you check the file, or have somebody check the file of the C.A.A. in Washington, do you, as a businessman in this particular field, expect to find everything that relates to this particular airplane in that file?

A. Yes, sir. It is all supposed to be in one file.

Q. And did it ever enter your mind that the Government would register and at the same time claim any title to it? A. No, sir, it didn't. [504]

Mr. Abbott: This is argument.

Mr. Blackman: This is state of mind, your Honor.

The Court: I think it might be rephrased in a better form. The objection will be overruled. You may answer.

The Witness: No.

Q. (By Mr. Blackman): In other words, Mr. Batchelor, if you had known that the Government was going to claim title to this airplane, would you have permitted International Airports to loan the

(Testimony of George Batchelor.)

Finns \$15,000 on the strength of the chattel mortgage on the airplane?

A. No, sir. We always considered the registration certificate as conclusive evidence of title. [505]

The Court: And if you had known the Government would or intended to make any claim, would you have done so?

The Witness: No, sir.

Q. (By Mr. Blackman): All right. Now, at the time that these papers were drawn up, Mr. Batchelor, and I am referring to International's exhibits which have been read to you earlier here, did International retain an attorney to assist them in the preparation of these papers? A. Yes, sir.

Q. And who was that? A. Yourself.

Q. Shortly after the transaction took place and International delivered the \$15,000, did you ever receive a written title report respecting the condition of the title of this airplane?

A. Well, I received a copy of one that we asked you to get.

Mr. Blackman: Will the clerk lay before the witness International's Exhibit K, please?

(The document was placed before the witness.)

Q. (By Mr. Blackman): Will you identify that document, Mr. Batchelor?

A. This is a letter, dated October 15, 1951, from the Aircraft Title and Guaranty Corporation, Suite 326 Shoreham Building, Washington, D. C.,

(Testimony of George Batchelor.)

addressed to Mr. Blackman, and [506] signed by Mr. James B. Murray, president.

Q. Did you receive a copy of that letter from my office at or about the date that the letter bears?

A. I did.

Mr. Blackman: If the court please, we will offer the letter in evidence at this time.

The Court: It will be received as International's Exhibit——

Mr. Blackman: That will be K.

The Court: What is the exhibit, Mr. Clerk?

The Clerk: K. I presume that is the one he is talking about here.

The Witness: Yes, sir, it is marked K.

The Court: Are you offering all of the exhibit?

Mr. Blackman: Sir?

The Court: Or just the letter?

Mr. Blackman: We will be offering all of the exhibit, your Honor.

The Court: Received in evidence.

(The document referred to, marked Defendant International's Exhibit K, was received in evidence.)

Mr. Blackman: Mr. Clerk, may I see that exhibit, please?

(The document was handed to counsel.)

Q. (By Mr. Blackman): Mr. Batchelor, when you received [507] the carbon copy of this letter,

(Testimony of George Batchelor.)

International's Exhibit K, did you read the statement at the bottom, as follows:

“There is no question but what the title on this aircraft is clear; otherwise the CAA would hesitate to record the same and issue a certificate in the name of the present registered owners, Messrs. Finn”?

A. Yes, sir, I did.

Q. And did the Title Company bill you for their services, or bill me and did I bill you?

A. Yes, sir, you billed us.

Mr. Blackman: Mr. Clerk, will you lay before the witness Exhibit L, please?

(Thereupon the document was placed before the witness.)

Q. (By Mr. Blackman): Will you identify that document?

A. It is on a piece of stationery from the Aircraft Title and Guaranty Corporation, the same address, the same date, October 15, 1951, to Mr. Blackman, “Reference: Complete search and report on N111H, \$10.00.”

Mr. Blackman: We will offer that in evidence as International's Exhibit L.

The Court: Is there objection?

Mr. Abbott: No objection, your Honor.

Mr. Nelson: No objection.

The Court: Received in evidence. [508]

(Testimony of George Batchelor.)

(The document referred to, marked Defendant International's Exhibit L, was received in evidence.)

Q. (By Mr. Blackman): Mr. Batchelor, this type of report from that type of aircraft title company, is that the usual course of business, in so far as getting the formal report of title respecting condition of aircraft? A. Yes, sir.

Mr. Blackman: Mr. Clerk, will you lay before the witness International's Exhibit M, please?

(The document was placed before the witness.)

Q. (By Mr. Blackman): Will you identify that? A. Well, this one is blank, you know.

Q. Yes, I know.

A. This is a blank United States of America Department of Commerce, Civil Aeronautics Administration form ACA-500 in three parts.

Q. And is that the usual government form that is used in connection with a recording of title and registration of aircraft?

A. It is the only one the Government will accept.

Mr. Blackman: Mr. Clerk, may I have that Exhibit L, please? Let's see if I have the right one. Oh, it is Exhibit M.

(The document was handed to counsel.)

Q. (By Mr. Blackman): Have you, during the

(Testimony of George Batchelor.)

course of [509] your business, Mr. Batchelor, filled out a number of these? A. Yes, sir.

Q. And as a part of Exhibit M, the printed instructions thereon recite as follows:

“New or Previously Unregistered Aircraft—
The applicant for registration of a new or previously unregistered aircraft must submit proof of his ownership.”

Mr. Abbott: I object, your Honor. This document is not in evidence.

Mr. Blackman: Very well. Counsel has reminded me. We will offer International's Exhibit M in evidence.

Mr. Abbott: To which we object. It is not tied up with anything here, and any recitals of procedure are hearsay.

The Court: What exhibit is it?

Mr. Blackman: It is Exhibit M.

The Court: I don't have any list to refer to. I understood that counsel would keep these up to date, and I expect that to be done daily.

Mr. Abbott: We prepared a list of exhibits, your Honor.

The Court: Daily, I said.

Mr. Abbott: I did not so understand the court, but we will do that.

The Court: In every trial I expect that.

Let me see the document, Mr. Clerk, please? [510]

(The document was handed to the Court.)

(Testimony of George Batchelor.)

The Court: Is there any dispute about it? May it be stipulated that this document is genuine in all respects in which it purports to be?

Mr. Abbott: So stipulated, your Honor.

The Court: Objection overruled. Received in evidence.

(The document referred to, marked Defendant International's Exhibit M, was received in evidence.)

Q. (By Mr. Blackman): Mr. Batchelor, one of the instructions which are attached to International's Exhibit M is as follows:

“New or Previously Unregistered Aircraft—
The applicant for registration of a new or previously unregistered aircraft must submit proof of his ownership. In the case of recognized manufacturers this proof may simply take the form of a letter from an official of the company setting forth the fact of ownership by reason of fabrication of component parts. Owners of homebuilt aircraft should submit whatever evidence of ownership is in their possession, such as invoices for component parts, etc. Owners of aircraft assembled from kits should send in the bill of sale showing their purchase of the kit. Owners of war surplus aircraft, or of aircraft imported from other countries, [511] must submit a bill of sale from the seller of the aircraft.”

(Testimony of George Batchelor.)

Were you aware of that at the time that you made this transaction with the Finns?

A. Yes, sir.

Q. Well, you had registered war surplus aircraft, hadn't you?

A. Yes, sir.

Q. And was that the way that you went about doing it?

A. We always had to either submit—at different times War Assets Administration gave different documents. Usually, just a receipt that you purchased an airplane, and the number of it.

Q. Whatever you got, you submitted?

A. And you submitted the bill of sale, and they would record it if it was good title.

Q. Now, did you continue to rely upon the Finns' certificate of registration and the title report which is International's K in evidence, at the time that International commenced doing work on this airplane?

Do you understand the question?

A. Well, I am not sure.

Q. Well, at some time after you caused the check to be delivered to the Finns, did International start to do some work on the airplane? [512]

A. Yes, sir.

Q. And approximately when was that?

A. The latter part of October; the latter part of October, 1951.

Q. Did they receive the airplane in their possession for that purpose?

A. Yes, sir.

Q. At their premises at Hangar No. 2, Lock-

(Testimony of George Batchelor.)

heed Air Terminal, Burbank? A. Yes, sir.

Q. By the way, what do you have there? A large hangar of some kind?

A. Yes, sir, an aircraft hangar.

Q. Do you have certain equipment in the hangar for the purpose of doing this work?

A. All equipment necessary to overhaul aircraft.

Q. At the time that International received possession of the airplane and commenced doing this work, did you still believe that the Finns were the owners of the airplane?

A. Yes, sir, at all times.

Q. Was that belief of yours based upon their certificate of registration and this title report that you had obtained? A. Yes, sir.

Q. Until when did International do this work on the [513] airplane?

A. Until sometime in, I believe, April, 1952.

Q. Up until that time, did anything come along to lead you to any different belief respecting the ownership of the airplane? A. No, sir.

Q. Did it ever occur to you, Mr. Batchelor, that the School District would issue a bill of sale to property if it did not own that property?

A. Never. That would be the last one you would think would.

Mr. Blackman: I have no further questions of this witness.

By the way, I believe, your Honor, for the sake of the record, it has been stipulated that the amount of work that was done by International, while it

(Testimony of George Batchelor.)

was doing work on the airplane between the dates that Mr. Batchelor has mentioned, is in the reasonable value of \$10,200, no part of which has been paid.

The Court: What dates are you referring to?

Mr. Blackman: Well, I believe the first date he mentioned was October the—well, late in October.

The Court: What year?

Mr. Blackman: Of 1951; and the last date that he mentioned was April of 1952. [514]

The Court: Are the facts as stated so stipulated to, as last stated by Mr. Blackman?

Mr. Abbott: They are so stipulated by the Government.

Mr. Nelson: So stipulated.

The Court: Do the defendants Finn want to stipulate?

Mr. Charles C. Finn: Your Honor, whatever stipulation does not—if it is necessary to stipulate so as not to jeopardize the other defendants, we will so stipulate.

The Court: I don't know whether it is or not. Do you so stipulate or not?

Mr. George C. Finn: Your Honor, we will stipulate, in the interests of justice that we are going to get to in this court, we stipulate that that is the situation.

The Court: Do you concur in that statement, Charles?

Mr. Charles C. Finn: Yes, your Honor.

(Testimony of George Batchelor.)

Cross-Examination

By Mr. Abbott:

Q. Mr. Batchelor, you have described the two separate inquiries which you caused or your attorney caused to be made in Washington, District of Columbia. However, but one of those inquiries, the telephone call, occurred before you paid \$15,000 to the Messrs. Finn; isn't that so?

A. Yes, sir.

Q. Who is the person you called, Mr. Batchelor?

A. I told you before, I don't remember. [515]

Q. Well, now, the court and jury don't know what you told me at the time of the deposition, so you will have to repeat it here. What was the name of the person you called?

A. I don't remember who I called.

Q. Was he some person employed by the Civil Aeronautics Administration?

A. No, sir, he wasn't.

Q. Was he a person in the same industry in which you are engaged?

A. I have a large acquaintance of people in the airline industry, and I know several attorneys in Washington, and I have a number of friends that are in and out of Washington, and quite often, if one of them is in Washington and they can be of service to our company, I will call them up and ask them to do something, if I just happen to know they are there; and, in turn, sometimes when I am

(Testimony of George Batchelor.)

in Washington, people call me and ask me to do things for them.

Now, I don't have any idea who I called three years ago, because there was nothing unusual about the call. All we wanted to know, was there any liens or encumbrances or mortgages on the airplane, or was the title clear, and they reported to us. So it was nothing unusual to remember.

Q. Your instructions to this person you called were to check all matters as to title, as they might appear on the CAA records? [516]

A. I don't know just what I told him.

Q. That was the general purport of it?

A. I told them to check, to see the title was clear and that there was no mortgages or encumbrances against it, or words to that effect.

Q. And to make that check at the Civil Aeronautics Administration? A. Yes, sir.

Mr. Abbott: At this time, your Honor, the Government offers in evidence Exhibit 7.

The Court: Is there objection?

Mr. Nelson: No objection.

Mr. Blackman: No objection.

The Court: Plaintiff's Exhibit 7 is now received in evidence.

(The document referred to, marked Plaintiff's Exhibit No. 7, was received in evidence.)

Mr. Abbott: With the court's permission, I will read one paragraph of that exhibit.

The Court: You may.

(Testimony of George Batchelor.)

Mr. Abbott: First reading, however, a stipulation effected in the course of the proceedings on Friday, October 15, 1954, reported at page 249 of the transcript of the proceedings of that day. I am quoting from the record beginning at line 22 of the indicated page: [517]

“We request the stipulation that that particular affidavit so identified has been on file with the public records of the Civil Aeronautics Authority from on or about April 16, 1951, continuously to the present time.”

And there follow the various statements of counsel acquiescing in the stipulation.

The document I am reading is a document identified in the stipulation, namely, Plaintiff's Exhibit 7. I am reading from page 2, the next to the final paragraph on that page:

“That said sale of this aircraft”——

which is elsewhere identified as the aircraft in suit——

“is contingent upon the agreement in writing executed between the Vineland School District and Charles C. Finn and George C. Finn, dated February 28, 1951.”

I believe it would be proper to identify the agreement described in the affidavit as Vineland's B.

Q. (By Mr. Abbott): Mr. Batchelor, you described the business in which you are engaged. Will

(Testimony of George Batchelor.)

you state to the court and jury whether it is a large or a small industry?

A. The aircraft industry?

Q. No, the industry which you define as the purchase and sale of aircraft and the repair thereof.

A. Well, our particular branch of it, that we specialize in, isn't extremely large. [518]

Q. Well, now, actually all the people in that industry in the country could be placed in a small room, could they not?

A. They could be placed in this courtroom, or the majority of them.

Q. And do you know most of them?

A. I know a large percentage of them.

Q. Isn't it customary within that industry, Mr. Batchelor, to require of a person who is selling an aircraft a chain of title of documents, that is, a group of documents by which his title is traced back to the original manufacturer of the aircraft, or the United States, as the case may be?

A. Mr. Abbott, I have bought an awful lot of airplanes, and I have sold a lot of them for our companies.

Q. I have asked you what is customary.

A. I am telling you.

Mr. Abbott: Your Honor, I ask——

The Court: Mr. Abbott, if you have an objection to make to the answer, you may make it at the conclusion of the witness' answer.

The Witness: I have never known of a sale where anyone has inquired or asked the owner of an

(Testimony of George Batchelor.)

airplane to produce a chain of title back to the original manufacturer, and I bought my first airplane in 1939.

Q. (By Mr. Abbott): Then it is your testimony there is no such custom, Mr. Batchelor? [519]

A. I have never known of any.

Q. In all of these years in which you have been operating in the aviation industry, you have become very familiar with the Civil Aeronautics Act, haven't you?

A. Well, that is a big Act.

Q. Well, you have become familiar with those portions which relate to the registration of aircraft, have you not?

A. I have registered a lot of aircraft.

Q. Well, have you become familiar——

The Court: Don't try to qualify him as a lawyer. If he were attempting to tell you what the law was, you would be objecting to it. You may ask him if he has read the statute, if you like.

Q. (By Mr. Abbott): Have you read the Civil Aeronautics Act of 1938? A. Not in full.

The Court: You can ask him what his understanding is, if you like.

Mr. Abbott: I would like to quote this on a particular aspect of the statute, if I may, your Honor.

The Court: Very well. You may ask him if he knows the statute provides so and so.

Q. (By Mr. Abbott): Do you understand, Mr. Batchelor, that the Civil Aeronautics Act of 1938 provides, in part, that registration of an aircraft by

(Testimony of George Batchelor.)

the Civil Aeronautics [520] Administration shall not be evidence of ownership of aircraft in any proceeding in which such ownership by such person is or may be in issue?

A. I never heard that until the last, I think, few days, but I will say few months; and contrary to that, I have been advised by counsel that a registration certificate for purposes of a lien was conclusive evidence of ownership.

Q. Who so advised you?

A. Mr. Blackman advised us as to that.

Mr. Blackman: If the court please, I think that that requires an explanation. I think what the witness is probably referring to is the aircraft lien statute of the State of California, under which he operates his business, for the most part, which does provide that the federal registration certificate is to be conclusive evidence of ownership. I think counsel knows the section involved.

Mr. Abbott: Yes, and I don't agree——

The Court: There is no contention that title is required under federal law, is there?

Mr. Blackman: No.

The Court: Title, if any, resulting from a transaction in California is acquired under the law of California, is it not?

Mr. Abbott: In the first instance, your Honor, I don't agree with counsel's paraphrasing of the statute. I don't [521] know if it is material to go into that here, but, secondly, if this is property in

(Testimony of George Batchelor.)

which the United States has an interest, the property interests are those defined by the statutes and laws of the United States and not those of California.

The Court: Yes, but so far as the statutes and laws of the United States cover it, but otherwise it will be governed by the law of the state in which the transaction took place, will it not?

Mr. Abbott: Our position is that the laws and statutes of the United States do apply, and there are many cases that cover that.

The Court: That would not apply, for instance, in a transaction as between the Vineland School District and the defendants Finn, or the defendants Finn and International Airports?

Mr. Abbott: Well, they apply to the extent that a statute of the State of California is invoked to show that some person other than the owner of the property may impose a lien upon it, to the extent that a California statute could be so construed, but it could not confer the disposition of federal property or a lien on federal property.

The Court: That wasn't my question. Of course, federal law is paramount wherever federal law applies. But a transaction between the Vineland School District and the defendants Finn, or between the defendants Finn and [522] International Airports, taking place in the State of California, would be governed by the law of the State of California, would it not?

(Testimony of George Batchelor.)

Mr. Abbott: I respectfully differ, your Honor, because——

The Court: Very well. You proceed. I didn't suppose there was any question about it.

Mr. Abbott: This point has been briefed in detail by the Government, your Honor, and the brief is on file with the court.

The Court: I have seen the brief.

Q. (By Mr. Abbott): Mr. Batchelor, do you recall a conversation as follows, with Mr. George C. Finn, and I am now quoting from the transcript of the proceedings of October 28, 1954, in this cause, page 283, beginning at line 12:

“Q. The use or title of that airplane, was that ever the subject between you and Mr. Batchelor?

“A. It was a question. Mr. Batchelor said, ‘Well, how did you get that airplane from the school?’

“I said, ‘I bought it from the school.’

“He said, ‘Well, how come?’ He said, ‘I was up looking at it a year or so ago, and they didn't want to sell it.’

“‘Well,’ I said, ‘Mr. Batchelor, that is our arrangements with the school, and I own the plane, [523] and you can check on it, and if you are satisfied, we can do business.’ ”

Do you recall the conversation which Mr. Finn so described, Mr. Batchelor?

(Testimony of George Batchelor.)

A. Well, I wouldn't—I recall a conversation, and that was the general gist of it. I wouldn't say that was it word for word.

Q. Well, that, in substance, is the conversation, is it not, sir? A. I would say so.

Q. Did you make the inquiry suggested by Mr. Finn in that conversation?

A. Well, we checked title, and they had the title, or, at least, that was the report we got.

Q. Do you mean that you made an inquiry of the Vineland Elementary School District?

A. Well, no, I mean, you don't check title there. There is only one place I know of, I have ever heard of, to check title, and that is Washington, on title.

Q. You made no check at Vineland, then; is that true?

A. I had been to Vineland and asked Mr. Bancroft if he wanted to sell the aircraft. He told me, "No."

Now, if he hadn't owned the aircraft, he would have said, "I don't own it, I can't sell it to you."

Now, the Finns showed me a registration certificate on [524] the airplane.

Q. Did you in the summer of 1951 cause an inquiry to be made at Vineland?

A. No, sir, I did not.

Q. Did you at any time after that make inquiry at Vineland? A. No, sir.

Q. Did the Finns show to you any document re-

(Testimony of George Batchelor.)

lating to the aircraft in suit, other than a registration certificate?

A. Well, I know, I remember very clearly the registration certificate and I believe that they showed me the bill of sale, or a copy of the bill of sale on the airplane. However, it has been some time ago, and I can't remember for sure right now.

Q. You do remember a bill of sale from the Vineland Elementary School District to the Finns?

A. Yes, sir.

Mr. Abbott: Will the clerk place before the witness International's Exhibit A, please?

(The document was placed before the witness.)

Q. (By Mr. Abbott): You are now viewing International's A, Mr. Batchelor, which is a single exhibit, consisting, however, of several documents, one of which is a bill of sale dated February 28, 1951. Is that the bill of sale which the Finns showed you? [525]

Mr. Blackman: Just a moment. I think the question assumes a fact not in evidence. I don't think the witness stated the Finns showed him a bill of sale.

The Court: Did he state that?

Mr. Abbott: I so understood, but if there is any question I will repeat the inquiry, your Honor.

Q. Did the Finns show to you a bill of sale from the Vineland Elementary School District, or did they not?

A. Well, as I said before, I have a hazy recol-

(Testimony of George Batchelor.)

lection of it now, but I am not sure. Because of the time, I don't remember.

Q. Does your present review of International's Exhibit A, refresh your recollection on that point?

A. Well, I have seen this before, and I am not sure whether the Finns showed it to me or not.

Q. Did you, on the prior occasion when you saw it, note the language appearing at the very top of the document?

A. Now, wait a minute. I beg your pardon. I have not—I did not see this affidavit, if that is——

Q. No, my question is directed only to the bill of sale.

A. Well, you said the bill of sale dated February 28th, didn't you?

Q. Yes, sir.

A. This is dated April—No, I see it is notarized [526] April the 14th. February 28th—I have seen this bill of sale before, but I don't remember whether the Finns showed it to me or not. I can't positively say.

Q. Will you read the top line on the document, appearing at its very top?

A. The very top says, "Bill of Sale."

Q. No, above that, in typewritten form.

A. Well, above "Bill of Sale" I can't read because of the staple. May I take it out?

Mr. Abbott: Certainly. [527]

The Court: The clerk will assist him with it.

The Witness: Seems to be a printed line that says, "Department of Commerce, C.A.A. bill of sale."

(Testimony of George Batchelor.)

Mr. Abbott: May I approach the witness stand for a moment?

The Court: Yes.

Mr. Abbott: I will call your attention, Mr. Batchelor, to the typewritten line just below "bill of sale." "As per agreement dated 28 February, 1951."

The Witness: Yes, sir.

Q. (By Mr. Abbott): Do you recall whether those words were on the bill of sale which you saw at some earlier date and which bears a resemblance to the one you are now viewing, namely, Defendant International's Exhibit A?

A. I may be confused, Mr. Abbott. But I said that I don't remember. I have seen this before. Whether it was just recently since the case started, or not—I think maybe the Finns may have shown it to me; but now, I couldn't remember positively. But I did read it, and I did—said, "As per agreement dated February 28, 1951." But I would still read, "For and in consideration of \$10.00 and other good and valuable consideration—" we hereby transfer"—the full and legal and beneficial title on the aircraft described as follows:"

Q. And in any event, on the occasion when you saw it, whenever that may have been, you did note the words you have quoted a moment ago? [528]

A. Yes.

Q. Now, isn't it a fact, sir, that whenever you purchased an aircraft from the War Assets Administration for commercial use, without restriction,

(Testimony of George Batchelor.)

that you received either a bill of sale or a document entitled "sales document"?

The Witness: Would you read that back to me, please?

(The question was read.)

The Witness: Well, No. 1, I have never before been involved in an airplane that there was any restriction on, and I think that in some instances they have various forms—the Navy had some forms. The War Assets had some called "memorandum receipts." I believe that was the title on them—that they issued when they sold aircraft.

Q. (By Mr. Abbott): Yes. But when you received a memorandum receipt in the course of purchase of an aircraft for commercial purposes from the War Assets Administration, didn't you also receive either a bill of sale or a sales document?

A. Well, I don't remember having ever received a bill of sale such as this.

Q. Well, you are now pointing to International's Exhibit A, which is a C.A.A. bill of sale?

A. That is correct.

Q. And I am not confining my question to that particular type of bill of sale. With that clarification, isn't it [529] true whenever you purchase an aircraft from the War Assets Administration for commercial use, that you received either a bill of sale or a document entitled "sales document"?

A. Well, as I said, in some cases, I think we received a document called a memorandum receipt.

Q. Yes, but——

(Testimony of George Batchelor.)

A. Which was the only document that we received. In most cases we did receive a document stating "sales agreement" or "receipt," sometimes. I know some cases where we received just a little receipt, handwritten.

Q. Did that receipt have the serial number of the aircraft in question?

A. Well, I couldn't say, now. Looking at all of them, I think it did—I would think so.

Q. You have never acquired an aircraft, taking the documents, which didn't describe a plane by the serial number, did you?

A. Not that I can remember.

Mr. Abbott: No further questions, your Honor.

Q. (By Mr. Nelson): Mr. Batchelor, you stated that you made an offer to the defendants Finn, when this aircraft was brought to your attention, of \$50,000. Did you know at that time whether or not any restrictions existed against the aircraft?

A. No, sir, I didn't know of any. [530]

Q. Would this offer of \$50,000 be for an aircraft which is fully equipped for commercial passenger use, and also C.A.A. certified?

A. Well, I would—well, that wasn't my intention at the time.

Q. Will you describe what your intention was at the time?

A. Well, as I said earlier, we had just finished some work in our shop, and we needed additional work at that time. The Korean War was going on,

(Testimony of George Batchelor.)

just commenced about that time, and mechanics were very hard to find, good ones. So we didn't want to have to lay any off. That was a consideration for making that large an offer.

Also, there was a market for the airplanes at that time. Now, we knew the airplane wouldn't be licensed at the time they brought it in, because we intended to do that work. But we expected the airplane to be in good condition, and to be flown into Lockheed Air Terminal. The offer was that it would be in good condition and flown into Lockheed Air Terminal. And it was a tentative offer, actually subject to inspection. I had seen the airplane before, and hadn't seen it for many months, and just on the basis of the pictures—or, at least, I remember, I think I saw pictures.

The Court: What do you mean by "licensed"?

The Witness: Well—— [531]

The Court: You mean licensed to carry passengers?

The Witness: Passenger or cargo, or—it had not type of C.A. license.

The Court: Not licensed by the Civil Aeronautics Authority for transporting persons or property?

The Witness: Yes, sir.

Q. (By Mr. Nelson): Was this type aircraft a good aircraft to use for cargo purposes at the time?

A. Very good.

Q. Could it also be adopted to passenger use at the time? A. Yes, sir.

(Testimony of George Batchelor.)

Q. And when you made your offer of \$50,000 were you considering it on the basis of being a fully equipped airplane for passenger use, whether or not it received Civil Aeronautics Administration authority and certification?

The Witness: I am sorry. Would you read that, please?

(The question was read.)

The Witness: Well, I am sorry, Mr. Nelson. I don't understand your question.

Mr. Nelson: Well, I will restate the question.

Q. (By Mr. Nelson): When you considered offering \$50,000 for this aircraft—you have already indicated that you didn't consider it from the standpoint of having C.A.A. certification—but did you consider it from the [532] standpoint of its being a fully-equipped commercial passenger aircraft?

A. Well, I knew the airplane wasn't going to be delivered fully equipped and fully licensed for \$50,000 at that time.

Q. And you were willing to pay \$50,000, sight unseen, for this aircraft, knowing that it wasn't fully equipped and knowing that it wasn't certified by the C.A.A.?

A. I don't believe I said that. I said it was still subject to inspection. And if the airplane was in good condition and would utilize the men in the shop, and keep them busy, we would pay that for it, delivered to Burbank.

(Testimony of George Batchelor.)

Q. When the aircraft was delivered to Lockheed Air Terminal, you had a good look at it, did you not? A. Yes, sir.

Q. Would your offer of \$50,000 still have been made after having a visual look at the plane after its being delivered to you?

A. I don't think so.

Q. Can you give us an approximation of what you believe the aircraft to be worth after that visual inspection?

A. At the time it was delivered to Burbank?

Q. Yes.

A. Well, I would say \$35,000 to \$40,000.

Q. Now, you have had an opportunity since you have [533] got into this particular action to review the restrictions which the Form 65 provides, have you not? A. Yes, sir.

Q. Let us assume that you knew at the time that this aircraft was delivered to International by the Finns, that you knew of those restrictions as you do now, what would have been your offer to the Finns at that time, with those restrictions on it?

The Court: You mean assuming your restrictions to be valid and binding?

Mr. Nelson: Yes, your Honor, as they appear in the agreement.

The Witness: Absolutely nothing.

Mr. Nelson: No questions, your Honor.

The Court: Anything further? You may step down.

Mr. Blackman: Your Honor, I have just a couple of questions, please.

(Testimony of George Batchelor.)

Redirect Examination

By Mr. Blackman:

Q. Mr. Batchelor, with respect to the questions of value on the airplane in, say, February 28, 1951, in the condition in which it was at the time that you saw it at Vineland in the summer of 1950, do you have any opinion as to its value? [534]

A. On February 28, 1951?

Q. Yes.

Mr. Nelson: Your Honor, I am going to object to the opinion coming in inasmuch as the witness obviously hadn't seen the aircraft at that time. He has no idea, apparently—unless we have some foundation of what its condition was when he saw it a year and a half or so before, and when it was finally delivered to the International Airports.

The Court: Sustained.

Mr. Blackman: Well, may it be stipulated that the aircraft was in substantially the same condition on February 28, 1951, as it was in the summer of 1950?

Mr. Nelson: I would not so stipulate. I have no knowledge to that extent. If it could be so shown, I would be glad to.

Mr. Blackman: Very well, your Honor. I will not pursue the inquiry.

The Court: You may step down, Mr. Batchelor.

(Witness excused.)

Mr. Blackman: If the court please, at this time, we would like to offer into evidence International's Exhibits just marked for identification, as follows: Exhibit N, photostatic certified copy of the Superior Court claim and delivery action, No. 599,895—shall I read the whole list, your Honor? [535]

The Court: Is there objection to Exhibit N?

Mr. Nelson: No objection.

Mr. Abbott: No objection.

The Court: Received in evidence.

(The document referred to, marked Defendant International's Exhibit N, was received in evidence.)

Mr. Blackman: Exhibit O, photostatic certified copy of the affidavit for claim and delivery and return of sheriff, dated June 13, 1952, and the undertaking therein in the same action.

The Court: Is there objection?

Mr. Abbott: No objection.

Mr. Nelson: No objection.

The Court: Received in evidence.

(The document referred to, marked Defendant International's Exhibit O, was received in evidence.)

Mr. Blackman: Exhibit P, photostatic certified copy of the answer to the complaint in that action.

The Court: Is there objection?

Mr. Abbott: No objection.

Mr. Nelson: No objection.

The Court: Received in evidence.

(The document referred to, marked Defendant International's Exhibit P, was received in evidence.)

Mr. Blackman: Exhibit Q, the photostatic certified [536] copy of the complaint for foreclosure of mortgage, action No. 600,291——

The Court: Are all these in connection with the court proceedings?

Mr. Blackman: Yes, sir.

The Court: Suppose you read them all at one time.

Mr. Blackman: R, photostatic certified copy of the answer in the same action.

Exhibit S is the certified copy of the findings and conclusions, dated February 27, 1953.

The Court: Does that complete the list?

Mr. Blackman: Yes.

The Court: Any objections to Exhibits Q, R and S, International's Exhibits Q, R and S?

Mr. Nelson: No objection.

Mr. Abbott: No objection.

The Court: Received in evidence.

(The documents referred to, marked Defendant International's Exhibits Q, R and S, were received in evidence.)

Mr. Blackman: May it be stipulated that the chattel mortgage, which is International's Exhibit B, was filed for registration with the C.A.A., the Civil Aeronautics Administration on or about No-

vember 14, 1951? I believe that's the date that the filing stamp shows.

Mr. Abbott: The Government would so stipulate. [537]

Mr. Nelson: So stipulate.

The Court: That's Exhibit B?

Mr. Abbott: Exhibit B, yes, sir.

The Court: Do the defendants Finn join in all these stipulations?

Mr. George C. Finn: In the interest to justice to Mr. Blackman, yes, your Honor.

The Court: Very well.

Mr. Blackman: If the court please, we have a witness that we would like to call at this time. Mr. Robert Fabian.

ROBERT H. FABIAN

called as a witness on behalf of defendant International Airports, being first sworn, was examined and testified as follows:

The Clerk: State your name?

The Witness: Robert H. Fabian, F-a-b-i-a-n.

Direct Examination

By Mr. Blackman:

Q. Mr. Fabian, what is your occupation or profession?

A. I am attorney—I am counsel for the Bank of America, National Trust & Savings Association.

Q. And you also hold an office for the Bank of America?

(Testimony of Robert H. Fabian.)

A. Well, I am an officer. My title is [538] counsel.

Q. In connection with your duty at the bank did you ever have occasion to pass on aircraft titles?

A. Yes. I am available for consultation to the people in the installment credit loan departments who make loans and on occasion I have been consulted in connection with loans on aircraft.

Q. The bank does lend money on airplanes?

A. Yes, we do.

Q. And has the bank loaned money on large transport-type airplanes? A. Yes, we have.

Q. Has the bank loaned money on transport-type aircraft which at one time or another may have been owned by the Government?

A. Well, I couldn't answer that categorically. I assume we have.

Q. Now, does the bank follow the usual banking practices in loaning money on airplanes, as far as you know? A. I believe we do.

Q. And is it your business to know how to determine what is the aircraft title upon which the bank may safely rely? A. Yes, I think so.

Q. Will you describe what is the bank's practice in loaning money on large transport-type aircraft, please? [539]

Mr. Abbott: I object, your Honor. The bank's practice is entirely immaterial.

Mr. Blackman: If the court please, we offer this witness to show that the practice at the bank em-

(Testimony of Robert H. Fabian.)

ploys here was substantially the same as what International did in lending money on this particular aircraft; and also that the registration certificate is one of the documents upon which the bank relies.

Mr. Abbott: We object to counsel making his offer of proof under these circumstances.

The Court: The objection is overruled. The question may be answered.

The Witness: Well, we require several different things. First of all we require, one of the requirements is that the prospective borrower be the registered owner of the aircraft, as shown on the registration certificate.

Q. (By Mr. Blackman): By the "registration certificate," Mr. Fabian, do you refer to a document which is in the same general form as a document attached to International's Exhibit A?

Mr. Blackman: Mr. Clerk, will you lay that before the witness, please?

May I assist the witness, your Honor?

The Court: You may.

The Witness: Yes, the document I am looking at is part [540] of what is designated as "certificate of registration," and the owner's name is shown on that. That is one of the documents that we require. If it is an aircraft which is registered at the time the borrower applies, he must produce the registration certificate. Or he must be in a position to furnish the documents so that the aircraft can be registered in his name after the loan is made, if he is purchasing the aircraft.

(Testimony of Robert H. Fabian.)

The other things we require, of course, are an application for the credit, signed by the borrower. He must have a mortgage on the airplane and a promissory note on the airplane—promissory note for the amount of the loan. We require the Part C of this document. That is, the bill of sale from the last registered owner. We trace the title back one notch, as it were; require him to find out where—to produce evidence as to where he bought—or procured the plane.

That applies to aircraft since, registered since November, 1946. Prior to that time there was a certificate of ownership issued by the C.A.A. which was accepted in lieu of the—instead of this document; which I understand they started using in 1946.

Q. (By Mr. Blackman): Would you ever loan money, or advise the bank to loan money, on an aircraft where you were not presented the registration certificate, which is in the [541] substantial form of one of the documents in Defendant International's Exhibit A?

Mr. Abbott: If your Honor please, the witness——

The Court: What is your objection?

Mr. Abbott: We object on the grounds it is immaterial what the witness——

The Court: Sustained.

Q. (By Mr. Blackman): Mr. Fabian, until I contacted you on this matter a few days ago, would the fact that a school was in the chain of title have

(Testimony of Robert H. Fabian.)

influenced you in any way on making a loan on the aircraft, assuming the present owner had a registration certificate, bill of sale and clear title report?

Mr. Abbott: We object. What would influence the witness is immaterial.

The Court: Sustained.

Mr. Blackman: We have no further questions of the witness.

The Court: Any cross-examination of Mr. Fabian?

Mr. Nelson: No questions.

Mr. Abbott: No questions.

The Court: You may step down, Mr. Fabian.

(Witness excused.)

The Court: Next witness?

Mr. Blackman: May the witness be [542] excused?

The Court: You may be excused, Mr. Fabian.

Mr. Blackman: Your Honor, International rests at this time.

The Court: Do defendants Finn desire to offer any evidence? [543]

Mr. Charles C. Finn: We maintain the same position, your Honor.

Mr. George C. Finn: Your Honor, we have heard this trial——

The Court: It isn't over with. I just asked you because it is your turn now. You are among the defendants, and I believe we have covered all of

them except you, haven't we? We have covered the defendant Vineland School District and Bancroft, and they have rested, and the defendant International Airports have rested, and the defendant Seaboard Surety Company has disclaimed any claim of title. Now it is your turn.

Mr. George C. Finn: Your Honor, we have our original problem.

The Court: My only question is: Do you wish to offer any evidence?

Mr. George C. Finn: Your Honor, we——

The Court: Just say "Yes," or "No." Then if you want to explain anything, you may do so.

Mr. George C. Finn: No, sir.

The Court: The answer is "No"?

Mr. Charles C. Finn: Yes, sir, it is "No, sir."

The Court: Very well. If you have no evidence to offer it is time to call upon the Government for any rebuttal.

Mr. George C. Finn: May I explain, your Honor, the "no, [544] sir"?

The Court: You may.

Mr. George C. Finn: We do wish to offer evidence. We have lots of it we would like to present. We feel that justice has been carried out in the case of the Government, and these other defendants, and we feel that we have fallen a little short in our own cause, that we requested a trial by a jury, and the Government refused to go along with that request.

The Court: The court refused, because you did not comply with the rules. I don't want to discuss it

any more. You have made your point. Is there anything else you wish to say?

Mr. George C. Finn: No, sir.

The Court: Very well. The Government may call its first witness in rebuttal.

Mr. Abbott: Mr. Strube, take the stand, please.

GORDON D. STRUBE

called as a witness on behalf of the Government in rebuttal, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Gordon D. Strube, S-t-r-u-b-e. [545]

Direct Examination

By Mr. Abbott:

Q. What is your occupation, sir?

A. I am president of the American Aeronautics Corporation.

Q. How long have you held that office?

A. Since 1949.

Q. Will you, very briefly and concisely, summarize your business experience for the last 10 years, sir?

A. Well, since 1949 I have been acting as president of the American Aeronautics Corporation. Prior to that I operated my own business, known as Air Transport Supply Company, which was organized in 1947. In the year '47 back to '46, I was United States purchasing representative for some foreign airlines. From 1943 to 1949 I was in the Air Force. From 1937 to 1942, I worked for Douglas Aircraft Company.

(Testimony of Gordon D. Strube.)

Mr. Abbott: Thank you, sir.

The Court: What is the business of American Aeronautics Corporation?

The Witness: Buying and selling of aircraft and aircraft components, and overhaul of that equipment.

Q. (By Mr. Abbott): Do you, in the course of your duties as president of that corporation, have occasion to buy and sell aircraft?

A. Yes, I do.

Q. Do you, in particular, buy and sell aircraft that [546] have at some prior date been owned by the United States Government? A. Yes.

Q. Have there been a large number of such transactions in which you have directly participated?

A. A large number of airplanes have been involved.

Q. Now, have there also been a substantial number of transactions, Mr. Strube?

A. Not more than seven or eight distinct transactions.

Q. Involving aircraft that have been purchased at some remote time from the United States?

A. Yes, a quantity of 60 airplanes all told.

Q. Have you bought and sold other aircraft which were not purchased directly or remotely from the United States?

A. Well, I have bought new aircraft, but I wasn't involved in the sale of them.

Q. Now, is there a definitive industry engaged

(Testimony of Gordon D. Strube.)

in the purchase and sale and repair of aircraft, Mr. Strube? A. Well, it is a large industry, yes.

Q. Well, is it a known industry, having a number of known components, of companies engaged in the practice? A. Yes.

Q. Are you widely acquainted within that industry? A. Pretty much so, yes.

Q. Calling your attention to the summer of 1951, sir, [547] was there at that time a reputation within the industry you have defined with respect to restrictions upon sale, use or possession of aircraft which had been acquired by educational institutions from the United States? A. Yes, there was.

Q. How long prior to the summer of 1951 had that reputation existed?

Q. Well, I first became aware of it in 1947.

Q. When did you first become aware of the reputation as a reputation, rather than the fact for which it stood?

A. You mean as a general reputation?

Q. Yes, sir.

A. Well, I would have to qualify that by saying that in 1947 my company became interested in the possible purchase of aircraft such as you have described, and after having counsel investigate the possibility of purchase on several different occasions, why, we gave it up, so to speak. From that time on I suppose it became more generally known, as other people made similar attempts to ours and failed.

Mr. Blackman: Just a moment. I move that the last statement of the witness be stricken.

(Testimony of Gordon D. Strube.)

The Court: Yes, beginning with "I suppose" the answer is stricken, and the jury is instructed to disregard it.

Q. (By Mr. Abbott): Did you have occasion, prior to and during the summer of 1951, to discuss the reputation I have [548] defined with other people within the industry, sir?

A. Yes, I did.

Q. Can you estimate how many persons may have engaged in such discussions with you—persons within the industry?

A. Well, that would be a little bit difficult. I imagine it could be from 20 to 35 or 40 people.

Q. What was the reputation within the industry in the summer of 1951, with respect to restrictions upon the sale, possession or use of aircraft in the hands of schools or educational institutions, and received by them from the United States?

A. Well, in a general way, it was the recipient of these aircraft from the Government were not allowed to sell or otherwise dispose of the aircraft, except through scrapping the aircraft. And you asked for our general knowledge of it. The ideas that came to us were that if we would acquire any such aircraft, we would have to provide scrap warranties showing that we had reduced the aircraft to the basic metals, and so, since we were in the aircraft business, we weren't interested in buying such a package.

Q. Was the reputation to which you have testi-

(Testimony of Gordon D. Strube.)

fied one that was firmly established within the industry?

Mr. Blackman: Just a moment. I will object to that as calling for a conclusion of the witness.

The Court: Sustained. [549]

Q. (By Mr. Abbott): Can you state the degree of notoriety of the reputation to which you have testified?

Mr. Blackman: Objected to as vague and indefinite.

The Court: Sustained. He has said it was general, has he not? In order to answer it, he would have to say it was general.

Mr. Abbott: I think the answer is sufficient, your Honor, and I will go on.

Q. (By Mr. Abbott): Are you familiar, Mr. Strube, with customary practices within the industry with respect to checking of title at the time of the purchase or sale or hypothecation of an aircraft?

A. Yes, I am.

Q. What are the customary practices, and what were the customary practices with respect to the checking of title on sale of an aircraft or lien of an aircraft in the summer of 1951?

A. Our practices, specifically, within our organization?

Q. No, the customary practices within the industry, if you know them.

A. They are pretty consistent. There is very little variation involved that is available to one. We use an aircraft title service located in Washing-

(Testimony of Gordon D. Strube.)

ton. We use that service primarily to transmit all of the documents, the chain of [550] title, and so on, to the appropriate office of the CAA to obtain a new registration or a reregistration, whichever the case might be.

We inspect the various bills of sale involved, from the origin of the first one to the one that is current, pass that on to this Title Service, and they take it from there.

The Court: You mean by your answer that the custom in the trade is to look to the documents on file with the Civil Aeronautics Administration in order to determine the title to an airplane?

The Witness: Well, sir, if we are purchasing an aircraft from an individual or from another company, we do avail ourselves of an inspection of the chain of title.

The Court: Where do you go to get them?

The Witness: Well, it all depends on how many times the airplane has changed hands.

The Court: Well, do you look in the records and the files of the Civil Aeronautics Administration? Is that where you look for the chain of title?

The Witness: No, they are not available to us.

The Court: The question asked you was not what you do, but what the industry in general does, what practice there is, if there is a practice, and I understood you to say there is.

The Witness: There is a practice that we know of, yes.

The Court: All right. What is the practice when

(Testimony of Gordon D. Strube.)

someone [551] comes in and wants to sell an airplane, or borrow money on it? What is the practice in verification of title? How do you determine whether that man owns the airplane?

The Witness: Well, the first thing we would ask him for——

The Court: Is that your practice now, you are speaking of?

The Witness: Yes, sir.

The Court: Very well.

The Witness: If a man came in the front door, and asked for an airplane, to sell an airplane, the first thing we would do is to ask for Form ACA-500.

The Court: What is that?

The Witness: That is the CAA registration form.

The Court: You would ask him to see the Civil Aeronautics Administration registration certificate?

The Witness: Yes, sir.

The Court: If he showed you that, what would you ask him for?

The Witness: That would be an indication that he possessed title to the aircraft. From that point on, having that indication, if we were interested in purchasing the aircraft, we would cause a further search to be made to determine whether there were any liens or incumbrances against the aircraft. [552]

The Court: How would you learn that?

(Testimony of Gordon D. Strube.)

The Witness: Through the Aircraft Title Service in Washington.

The Court: What does the Aircraft Title Service do?

The Witness: They would contact the CAA.

The Court: Go over to the Civil Aeronautics Administration and look through their records?

The Witness: Yes, sir.

The Court: Anything further?

Q. (By Mr. Abbott): Are there any other steps that are customarily taken in checking title of the prospective seller or mortgagor?

A. Well, if the airplanes, or, for that matter, any aircraft equipment that was formerly Government owned—if there was a suspicion or indication that any scrap warranties had ever existed against the aircraft or the equipment, we would certainly delve further into the matter of whether any waivers had been provided against that equipment—the waiver of a scrap warranty.

Q. Would it be customary to make such inquiry if it were found that a school or school district were somewhere in the chain of title?

A. We would do that, yes, sir.

Q. Would that be customary practice?

Mr. Blackman: Well, now—— [553]

The Witness: I would say yes.

Mr. Blackman: I will reserve it for cross-examination, your Honor.

Q. (By Mr. Abbott): Would the customary practice within the industry be to accept a Civil

(Testimony of Gordon D. Strube.)

Aeronautics Administration registration certificate as evidence of a waiver of a scrap warranty by the Government?

A. No, we couldn't accept it. We wouldn't feel that the CAA would have the authority to provide a waiver of scrap warranty.

Q. Now, when you testify to what you would do, are you testifying to the customary procedure, Mr. Strube?

A. Yes, from my experience, I would say yes.

Mr. Abbott: No further questions, your Honor.

Cross-Examination

By Mr. Blackman:

Q. Now, Mr. Strube, will you tell me again the name of the company of which you are an officer?

A. American Aeronautics Corporation.

Q. And where is that located?

A. Burbank, California.

Q. Are they located on the field at Lockheed Air Terminal?

A. No, we are adjacent to Lockheed. Do you want the [554-555] address?

Q. Pardon? A. Do you want the address?

Q. No, I just wanted to have some further identification. Do you have aircraft parked on the field?

A. We have one airplane at Lockheed Air Terminal and Pacific Aeromotive at the present time.

Q. What kind of an airplane? A. F-51-D.

Q. That is a fighter type airplane?

(Testimony of Gordon D. Strube.)

A. Yes, sir.

Q. That is not a transport type?

A. No, sir.

Q. A passenger or transport plane?

A. No, it is a military airplane.

Q. That is an airplane you bought from War Surplus, or someone else?

A. No, it was purchased from a foreign government.

Q. From a foreign government? A. Yes.

Q. Has your company ever owned any C-46s?

A. No.

Q. Have you personally ever owned any C-46?

A. No, I haven't.

Q. Then you have never had occasion to loan money on [556] C-46s either, have you?

Mr. Abbott: Your Honor, I object.

The Witness: We have never loaned any money on any airplane.

Mr. Abbott: As immaterial.

The Court: Mr. Abbott, either make your objection before the answer commences, or wait until after the answer is finished.

Now, what is your objection?

Mr. Abbott: We object, your Honor, on the ground that the particular model of aircraft is immaterial.

The Court: Overruled

Mr. Blackman: The answer was "No"?

The Court: Will you read the answer, please?

(The answer was read.)

(Testimony of Gordon D. Strube.)

Q. (By Mr. Blackman): So that when you tell us about the usual practice, you are telling us about what—you are not telling us about anything in which you personally have had any experience, so far as the usual practice in lending money on aircraft is concerned?

A. In lending money on airplanes?

Q. Yes. A. That is true.

Q. And when you tell us about the usual practice with respect to what you do to purchase an airplane, you are not [557] telling us about any personal experience that you ever had in purchasing an airplane such as the C-46 here in suit, are you?

A. Such as the C-46?

Q. Yes.

A. Well, I would say there is a similarity between a C-47, and a C-54.

Q. Very well. But at this moment we are confining it to the C-46, which happens to be the airplane in suit. Have you ever had any personal experience in purchasing such an airplane?

A. No, I never have.

Q. Have you ever operated a C-46 transport type aircraft? A. No.

Q. Have you ever operated any type of aircraft for commercial purposes? A. No.

Q. Does your company do any overhaul work on aircraft? A. Yes.

Q. On any transport type aircraft?

A. Yes.

Q. On any C-46s? A. No. [558]

(Testimony of Gordon D. Strube.)

Q. You never have had a C-46 in your shop for modification, overhaul, repair, maintenance?

A. None whatsoever.

Q. Or for any purpose whatsoever; is that right?

A. That's right.

Q. When you say you participated in a large number of transactions with the Government as far as purchasing aircraft is concerned, none of those related to large transport type aircraft?

A. Well, I think I said I participated in a small number of transactions involving a large number of aircraft. I think you transposed it, but in answer to your question, I have purchased one large transport aircraft from the Government.

Q. And that was what kind? A. A C-54.

Q. I see. Did you buy that for your own account? A. Yes.

Q. From whom did you purchase it?

A. The U. S. Air Force.

Q. You bought it directly from the Government, then? A. Yes, I did.

Q. And you cleared title through the CAA?

A. That's right.

Q. You got a certificate of registration on it? [559] A. Yes.

The Court: Did you later sell that airplane?

The Witness: Yes, your Honor.

The Court: When you sold it, to whom did you sell it,—to an individual?

The Witness: Yes, sir.

The Court: Or some corporation?

The Witness: It was Allied—

(Testimony of Gordon D. Strube.)

The Court: A private concern?

The Witness: Yes, sir.

The Court: What did you do to prove to that private concern that you owned it?

The Witness: I produced the Form ACA-500.

The Court: What is that?

The Witness: That is the——

The Court. Certificate of Registration?

The Witness: ——certificate of registration.

The Court: Anything else?

The Witness: Yes, and a copy of my purchase contract from the United States Air Force.

Q. (By Mr. Blackman): Now, I believe you stated that you first became aware of school restrictions in 1947, when you attempted to purchase a school aircraft? A. Not specifically.

Q. Will you tell me what brought this to your attention? [560]

A. Well, the fact that in the conduct of my business I traveled about the United States, and occasionally ran into or came across an airplane that was represented to be in the possession of some non-profit organization, that it might be sold, and from the general appearance of these airplanes, the reputation of them was that they were generally in pretty good shape, so that they generated interest in the minds of many people and created a temptation to buy them, and we were not excluded from those temptations; and in our various inquiries as to who owned the aircraft, the ownership title of them, the old bugaboo of the scrap war-

(Testimony of Gordon D. Strube.)

ranty was generally in evidence, and appeared, and so we never got down actually to the detailed business of attempting to buy any of these airplanes.

Q. You never actually attempted to purchase these airplanes from the school districts who owned them?

A. That's right. It appeared futile, and we never spent any great lot of time and effort on them.

Q. But you entered into active negotiations with the school districts for them?

A. No, sir.

Q. You never got that far? A. No, sir.

Mr. Blackman: I see. [561]

The Court: Anything further?

Q. (By Mr. Blackman): One thing more: You stated that you used an Aircraft Title Service in Washington to determine the question of title and whether or not there were any liens on the airplanes? A. Yes, we did.

Q. Actually, it would be the Title Service that goes over to the CAA and checks through the file, is it not?

A. Well, in all instances that we have had, no.

Q. Well, would you yourself go to Washington and do that? A. No, I wouldn't.

Q. Well, who would do it for you?

A. In what particular instance?

Q. Well, whenever you are requesting a title search on an airplane, who would do that for you?

A. Well, I had a case—I will have to give you an example.

(Testimony of Gordon D. Strube.)

The Court: No. Who usually does it? Doesn't the Title Service do it?

The Witness: Yes, that is the usual case.

Q. (By Mr. Blackman): And that is what you rely on? A. Not in 100 per cent of the cases.

The Court: The question is whether you usually rely on them. You wouldn't pay them unless they were to go over and [562] search the records, would you?

The Witness: That is right. I will say 90 per cent of the time we do rely on them.

Mr. Blackman: Very well. No further questions.

Redirect Examination

By Mr. Abbott:

Q. Do you rely on the Title Service Company report when you know that there has been a school somewhere in the chain of title?

Mr. Blackman: Just a moment. That is the same question that I put to Mr. Fabian, and counsel objected to it, and the objection was sustained.

Mr. Abbott: The question was purely as to customary practice. I will reframe the question.

Q. (By Mr. Abbott): Is it customary practice, Mr. Strube, to rely upon the title report from Washington when you have actual knowledge that the aircraft has been owned on some prior date by a school or other non-profit institution?

Mr. Blackman: Just a minute.

The Court: Owned by a school?

(Testimony of Gordon D. Strube.)

Mr. Abbott: In the possession of a school, where the school was in the chain of title, your Honor.

The Court: In the chain of title?

Mr. Abbott: Yes, your Honor. [563]

The Court: I understood the Government contended that the school didn't own it, that the school was not in the chain of title.

Mr. Abbott: The chain of title presented by the purchaser is something by which he claims title, or claims the chain of title. If it will be more accurate, I will refer to the claimed chain of title.

The Court: You mean where there is some knowledge that the plane is war surplus, and is in the possession of some school district. Is that what you mean?

Mr. Abbott: I will adopt the court's terminology.

Mr. Blackman: To which we will object, your Honor, on the ground that the question calls for the witness to state what is the usual practice, and the witness himself has stated his lack of qualifications to give the usual practice in a case where the school has been in the chain of title.

The Court: And, also, that it has already been asked and answered?

Mr. Blackman: That it has already been asked and answered.

The Court: And is not proper redirect?

Mr. Blackman: And is not proper redirect.

The Court: Sustained.

Q. (By Mr. Abbott): Is there any difference between the procedures for checking title, the cus-

(Testimony of Gordon D. Strube.)

tomary procedure within [564] the industry. Mr. Strube, for checking title on a C-46, and that of checking title to other aircraft? A. No.

Q. Then does it make any difference at all in testifying to customary practice, whether your experience is based upon a C-46, C-47, C-54 or other aircraft? A. No, it wouldn't.

Mr. Abbott: No further questions, your Honor.

Recross-Examination

By Mr. Blackman:

Q. Then, as I understand it. Mr. Strube, you have never seen a situation where a school airplane was offered to you by a third party, who claimed to have purchased it from a school; is that right?

A. That's right.

Q. And that is the extent of your knowledge regarding customary practice where a school happens to be one of the former owners—I will strike that.

The Witness: No, it isn't.

Mr. Blackman: I will withdraw the question. No further questions.

Mr. Abbott: May the witness be permitted to answer the question last posed?

The Court: It is withdrawn. [565]

Mr. Nelson: No questions, your Honor.

The Court: You may step down, Mr. Strube, and you will be excused.

(Witness excused.)

The Court: We will take the recess, ladies and gentlemen, and it will have to be to Wednesday morning. The court has other matters to hear on Monday, and Tuesday is Election Day, so it will be necessary to continue over to Wednesday morning, and if there is no objection, that will be the order.

Again, before we separate, I must admonish you not to converse or otherwise communicate, among yourselves or with anyone else upon any subject touching the merits of this trial, and not to form or express an opinion on the case until after it has been finally submitted to you for your verdict.

You are now excused until next Wednesday morning, November 3rd, at 9:30.

(Thereupon the jury retired from the courtroom.)

The Court: Is it stipulated, gentlemen, that the jury has retired from the courtroom?

Mr. Abbott: So stipulated.

Mr. Nelson: So stipulated.

Mr. Blackman: So stipulated.

The Court: The record will so show. How much longer do you anticipate the Government will be on rebuttal?

Mr. Abbott: Direct examination on rebuttal, your Honor, [566] will take approximately one hour and a half to two hours.

The Court: Do you anticipate any sur-rebuttal?

Mr. Blackman: On the basis of what we know now, your Honor, the answer is no.

Mr. Nelson: That would be correct so far as we are concerned, too.

The Court: Very well. Then we should be able to submit the matter possibly on Wednesday? How much time do you wish to argue to the jury

Mr. Abbott: The Government suggests one hour for each party, your Honor.

Mr. Blackman: We can adhere to that limitation, your Honor. In fact, once the court defines the issues to be submitted to the jury, I really don't believe that it will take that long.

Mr. Nelson: We will certainly stay within the period, your Honor.

The Court: Perhaps we had better meet sometime on Tuesday and discuss the questions that are to be submitted to the jury, but we don't want to interfere with anyone voting.

How about 2:00 o'clock, Tuesday afternoon?

Mr. Nelson: That would be fine, your Honor. I could vote and still get here by then.

Mr. Abbott: We have this problem, your Honor, that all of us would like to prepare instructions based on the [567] interrogatories that will be submitted to the jury. If at an earlier time, perhaps Monday, it would be possible to settle the interrogatories, we would then have an opportunity to prepare and submit those instructions. [568]

The Court: I would assume you would submit proposed instructions based upon the proposed interrogatories.

Mr. Abbott: Each party is submitting interrogatories——

The Court: And you have seen them?

Mr. Abbott: —and we have seen those filed by the School District.

The Court: I don't expect to give too many instructions to this jury. The interrogatories will speak pretty largely for themselves. If there are any rules on law on which the jury should be advised, I will be glad to instruct the jury.

Mr. Abbott: Of course, we can only speculate as to which particular interrogatories would be submitted. There is a large number of them.

The Court: If there are rules of law that would be applicable to any of them—well, I can't take this matter up Monday, gentlemen. I can take it up at 2:00 o'clock Tuesday afternoon. And you will have part of that time—of course, there is no rule against working at night, Tuesday night. And the arguments and testimony will certainly take up the day Wednesday, and probably it will be Thursday, Mr. Abbott, before we can give it to the jury.

Mr. Nelson: If the court please, on one matter; it will be extremely difficult for us to prepare either interrogatories or instructions to the jury on this matter of conversion. We have seen no amended pleading come into the action, [569] although the Government has discussed it on occasion. So am I to assume I am still with the inducement action and I will only put instructions in in that respect?

The Court: That is all that has come forward. Indications have been made there will be some motions to amend the pleadings to conform to the

proof. I am not inviting them. Of course, the court will entertain them if they are made.

Mr. Abbott: A motion of that character by the Government is now under submission, your Honor.

The Court: I haven't seen the pleading or any specifications of what particulars you wish to amend to conform to the proof, but upon the close of evidence I will hear any motions you wish to make.

Mr. Nelson: Very well, your Honor.

The Court: If we need the time, we will take whatever time is necessary to do it. But I don't see any reason why you can't prepare your instructions based upon the rules of law that will be applicable and as you contend them to be, in any event, irrespective of what interrogatories are put to the jury.

We will work it out Tuesday afternoon. I take it all of the proposals are in.

Mr. Blackman: No, your Honor. Ours are not in. However, to assist counsel, the only three that we intend to [570] submit are those relating to notice on the \$15,000, notice on the work that was done thereafter and waiver. Those are the three that we intend to submit.

The Court: Very well. And you serve and file them Monday.

Mr. Blackman: Yes.

The Court: Not later than 12:00 o'clock Monday. Anything further?

Mr. Abbott: Nothing further, your Honor.

The Court: The trial will be recessed until Wednesday morning at 9:30.

(Whereupon at 5:15 o'clock p.m. a recess was taken until 9:30 o'clock a.m., Wednesday, November 4, 1954.) [571]

November 2, 1954; 9:30 A.M.

The Court: Ex parte matters? Case on trial.

Is it stipulated, gentlemen, that the jury is present?

Mr. Abbott: So stipulated.

Mr. Nelson: So stipulated.

Mr. Blackman: So stipulated.

The Court: The record will so show. You may call the first witness in rebuttal.

Mr. Abbott: Mr. Edward Bradley.

EDWARD G. BRADLEY

called as a witness by and on behalf of the plaintiff in rebuttal, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Edward G. Bradley.

The Clerk: Be seated, please.

Direct Examination

By Mr. Abbott:

Q. What is your occupation, Mr. Bradley?

A. I am assistant chief, Real Property Division—Real Property Section, Surplus Property Division, Department of Health, Education and Welfare.